

Ann L. Breslin

13 (Pages 46 to 49)

Page 46

1 comfortable in applying and interpreting complex
2 environmental laws relating to HSCA?

3 A. That, and also Federal Superfund Laws.

4 Q. Is it also true that you spent no time trying
5 to understand the personnel laws relating to your
6 position?

7 A. That's not true. I told you, I definitely did
8 look up the Merit Rules. I did read them. I understood
9 some parts of it.

10 Q. Fair enough.

11 A. I carried between 12 and 15 sites at all
12 times. I worked weekends. Nights late. I understood
13 what I needed to understand for that point in time.

14 Q. Was it a stressful job, then, if you were
15 working that many hours?

16 A. Of course, yes.

17 Q. Yes?

18 A. Yes.

19 Q. Is your current position stressful?

20 A. Oh, yes.

21 Q. Do you still work nights and weekends with
22 your current job?

23 A. I do. Yes.

24 Q. How is it that you are sure it is not your job

Page 48

1 looked at in the past?

2 A. I probably looked at them on line or a
3 third-hand copy. Who knows?

4 Q. Do you know how the salary increases work for
5 State of Delaware employees, generally? That's kind of
6 vague.

7 A. It is a very vague question. In other words,
8 how do you get a raise or not? Or how are the systems
9 applied? I know the basics. I know some of the
10 information about selective market variation. I may have
11 misinterpreted because it was spoken of in one form, and
12 it was actually maybe not in reinstitution of selective
13 market. It may have been a Limited Maintenance Review,
14 if I went through my information again.

15 I had a woman that I considered a friend
16 at that point in time, again we don't socialize, two
17 people that I knew fairly well that were in the selective
18 market.

19 Q. Who was that?

20 A. Betsy Frey and Jane Biggs Singer.

21 Q. Let me ask a more narrow question.

22 Was it the general practice for State
23 employees to get an increase in pay once a year?

24 A. No.

Page 47

1 stress that keeps you awake, as opposed to your concerns
2 about this grievance -- this lawsuit?

3 A. Because when I'm laying in bed thinking about
4 this, it is pretty obvious what I'm thinking about.

5 My job as an OSC is the best job in the
6 agency. It is phenomenal. Couldn't be better.

7 Q. Great.

8 A. So...

9 Q. That's a good attitude to have.

10 A. I love it.

11 Q. Look at the document that I put in front of
12 you.

13 A. Sure.

14 MS. CSIZMADIA: Can I have that marked
15 as Breslin 6.

16 (Document entitled Table of Current
17 Pages was marked as Breslin Exhibit No. 6 for
18 identification.)

19 BY MS. CSIZMADIA:

20 Q. Tell me what it looks to be?

21 A. This document contains rules and regulations
22 which govern personnel administration in Merit System
23 agencies.

24 Q. Does that look to be the Merit Rules that you

Page 49

1 Q. Was it the general practice that it happened
2 more or less frequently than that?

3 A. Less frequently, definitely. There were
4 several years I believe that there were no pay increases.
5 Due to budget constraints. Hiring freezes. Blah, blah,
6 blah. Oops. I did it again.

7 Q. For the most part, did State employees get
8 raises more frequently than once a year?

9 A. My understanding was it was in the summer.
10 June 30th, July 1st, was the yearly raise. Two or three
11 percent. Something like that. I don't remember.

12 Q. Is it fair to say, the hope was, we would get
13 one once a year, but sometimes we would not even get
14 that?

15 A. That's correct.

16 Q. Now, when State employees were given a raise,
17 in July or in the summer months, do you know what that
18 did to the pay range?

19 A. Well, basically, the paygrade, the pay range
20 was bumped up, too. For example, why I left 23 cents a
21 year over entry level as an Environmental Scientist 3
22 with six years of experience was that I would get a
23 couple of percent and the paygrade would go up.
24 Basically, the feeling of it was bumping on your feet.

Ann L. Breslin

14 (Pages 50 to 53)

Page 50

1 You could never get away with it -- get away from it.
 2 Once you were at entry level, you had no
 3 hope, unless you had an advanced hire, or some sort of
 4 magic wand was waved around. You would always be an
 5 entry level.
 6 Q. Did that apply to everyone?
 7 A. I know it applied to SIRB and me.
 8 Q. Now, you talked about an advanced hire?
 9 A. Yes.
 10 Q. What was an advanced hire?
 11 A. My understanding of advanced hire was
 12 something that your manager developed with quite a bit of
 13 input from the person to prove that you were more than
 14 just entry level.
 15 Q. Drawing your attention to Merit Rule 5.0711
 16 in your packet.
 17 A. Okay.
 18 Q. Can you read that?
 19 A. 5.0711?
 20 Q. Yes. 5.0711. Actually, I would like to draw
 21 your attention to 5.0710.
 22 Can you read that?
 23 A. Yes, I can.
 24 Q. Would you read it out loud for me, please?

Page 51

1 A. How about if you read it?
 2 Q. I would appreciate it if you would read it for
 3 me?
 4 A. I feel like I'm back in school. Upon initial
 5 appointment to any position in the classified service, on
 6 or after July 1, 1986, an employee shall be paid a salary
 7 equal to the minimum percentage of midpoint for the
 8 assigned paygrade, except as hereinafter provided.
 9 Q. Is that what you just described to me?
 10 MS. BREWINGTON: I'm going to object.
 11 THE WITNESS: No. That's not what we
 12 just talked about. No. Actually, it is not. You asked
 13 me about pay raises and pay scales and things like that.
 14 BY MS. CSIZMADIA:
 15 Q. Did you tell me that your pay range stayed the
 16 same at the minimum percentage of midpoint for your
 17 entire tenure at DNREC?
 18 A. It often was 23 -- five cents, 12 cents more a
 19 year, but relatively close. Yes.
 20 Q. Were you in a position in the classified
 21 service, to your knowledge?
 22 A. I guess I was. I'm not sure.
 23 Q. Have you read this section before in the past,
 24 do you remember?

Page 52

1 A. Yes. A long time ago. But do I remember it?
 2 No.
 3 Q. Could you read 5.0711? Is that one of the
 4 things that is an exception to that initial rule?
 5 A. Mum-hum. Yes.
 6 Q. Can you read 5.0712?
 7 A. The appointing authority may request, and the
 8 State Personnel --
 9 Q. I'm sorry. Can you read 5.0711?
 10 A. The Appointing Authority may approve a
 11 starting rate higher than the minimum paygrade up to 80
 12 percent of midpoint where the applicant's qualifications
 13 are clearly over and above those required as minimum by
 14 the class specification.
 15 The Director may approve a starting rate
 16 higher than the 80th percentile provided that such higher
 17 rate is requested in writing by the appointing authority
 18 and is clearly justified and contains applicable
 19 documentation of the applicant's qualifications.
 20 Q. Is that what you were referring to as an
 21 advanced hire?
 22 A. Mum-hum.
 23 MS. BREWINGTON: Yes?
 24 THE WITNESS: Yes.

Page 53

1 BY MS. CSIZMADIA:
 2 Q. And the criteria there is that the
 3 applicant's qualifications are clearly over those
 4 required as a minimum by the class specification.
 5 Is that correct?
 6 A. That's correct.
 7 Q. Is it fair to say that it also says that the
 8 request must be in writing and that the request must
 9 clearly justify and contain applicable documentation?
 10 A. Yes. The question I would ask is what is
 11 applicable documentation. It seems to be up to
 12 interpretation, whether it be just a narration of
 13 previous experiences.
 14 Q. Who wrote the initial request for your
 15 advanced hire?
 16 A. Alex wrote the first draft. He sent it to
 17 Karissa Hendershot and I. I made some changes and sent
 18 it to -- I have the E-mail chain of it. Sent it back to
 19 Alex. Alex made some changes. Sent it to Christina
 20 Wirtz. Christina made changes. I sent it to Paul, also
 21 noting I was going to print out a copy for him. He
 22 always liked being able to write on the forms.
 23 Initially, since he approved the final, it came from him.
 24 It was signed by Alex for Christina and for Paul, since

Ann L. Breslin

15 (Pages 54 to 57)

Page 54

Page 56

1 they were both out of the office.

2 Q. Did you verify the information that was in it,
3 that it was correct? Was the information in the memo
4 correct?

5 A. My assumption is, I added some information. I
6 added a lot of information that was given to me by Paul.
7 I'm assuming I verified that the information was correct.

8 MS. CSIZMADIA: Mark this as the next
9 exhibit.

10 (Document dated November 13, 1996 was
11 marked as Breslin Exhibit No. 7 for identification.)

12 BY MS. CSIZMADIA:

13 Q. I just showed you a document.

14 Can you identify it?

15 A. Yes. This is my advanced hire that Karl
16 developed, based upon the one Jamie put together for
17 Keith.

18 Q. What percentage of midpoint were they asking
19 for you?

20 A. 91.8.

21 Q. That's higher than 80 percent?

22 A. Correct. That's correct. That is why I said,
23 as Keith's was. And Keith's was approved.

24 MS. CSIZMADIA: Next exhibit.

Page 55

1 (Document dated December 10, 1996 was
2 marked as Breslin Exhibit No. 8 for identification.)

3 BY MS. CSIZMADIA:

4 Q. I will show you another document while we are
5 at it.

6 Can you identify it?

7 A. It's the initial information that Karl sent
8 down to justify. As with Keith's package, they requested
9 additional information from Jamie. Jamie sent it down.
10 And, basically, Karl did the same thing.

11 Q. And you verified that information, also?

12 A. Yes. Well, I mean, I got the letter for him.
13 And he added the performance review.

14 Q. And did you sign the job accepting the
15 position, irregardless of the outcome of the advanced
16 hire request?

17 A. Regardless of the outcome of the advanced hire
18 request. I mean, that's not exactly what happened. I
19 was already told at that point in time, the advanced hire
20 request was denied. So, regardless of that, I did accept
21 the starting salary at that point in time.

22 Q. What were you told about DNREC human
23 resources, their review of the advanced hire packages?

24 A. You mean, how they reviewed it?

1 Q. Is it fair to say that you were told it was
2 turned down?

3 A. Yes. Oh, yes. I was told that.

4 Q. Who told you that?

5 A. Karl.

6 Q. And did Karl tell you what his understanding
7 of why it was turned down was?

8 A. That they considered Keith's coastal
9 archeology work, and the fact that it took him to get his
10 Master's degree twice as long as it took me was
11 considered work experience. Where my biology and botany
12 was not considered applicable work.

13 Q. Are those the words that he used?

14 A. Yes.

15 Q. Or was that your characterization?

16 A. To my recollection, and this is almost
17 10-years-ago, yes.

18 Q. Do you know who reviewed the request in
19 personnel?

20 A. Evidently, Sharon Tazelaar did.

21 Q. Did you know Sharon Tazelaar?

22 A. I knew who she was at that point in time. I
23 know now what has happened to her. I know she is not
24 competent anymore. I believe she was going to die at

Page 57

1 some point in time because of some physical problems.

2 Q. Serious physical problems?

3 A. Yes. And they were surprised she even lived.

4 Q. Now, how familiar were you with the human
5 resources office at that point?

6 A. Not very much familiar.

7 Q. Do you know who was the head of the human
8 resources offices?

9 A. I think Marilyn has always been the head of
10 the human resources office as long as I can remember.

11 Q. Marilyn Ramsey?

12 A. Yes.

13 Q. Obviously, she is a female.

14 Is that right?

15 A. Yes.

16 MS. BREWINGTON: Argumentative.

17 MS. CSIZMADIA: I don't see how it is
18 argumentative.

19 MS. BREWINGTON: You wouldn't.

20 BY MS. CSIZMADIA:

21 Q. Can you tell me about the type of work you did
22 when you were an Environmental Scientist 3?

23 A. Project management. Remediation.

24 Coordinating with the EPA Superfund Sites. Soup to nuts.

Ann L. Breslin

16 (Pages 58 to 61)

Page 58

1 Q. And project management is one of the
2 requirements of the Environmental Scientist position.
3 Correct?
4 A. That's correct.
5 Q. In Paragraph 13 of your complaint, you,
6 essentially, state that Mr. Robertson resigned from his
7 position, returned a year later in November of 2003 and
8 was rehired at a higher salary than he was making when he
9 left?
10 MS. BREWINGTON: What number are you on?
11 MS. CSIZMADIA: Paragraph 13.
12 THE WITNESS: Yes. That's, essentially,
13 correct. When he left, and by the time he came back, the
14 Limited Maintenance Review had gone through. So, those
15 making above entry level were given an additional five
16 percent. And those of us that would be now below entry
17 level were brought to minimum of paygrade.
18 BY MS. CSIZMADIA:
19 Q. When you say in your complaint he was retired
20 at a higher salary, have you just explained why he was
21 rehired at the higher salary?
22 A. Yes.
23 Q. Are you aware there is a Merit Rule that
24 required him to be rehired at the same salary he would

Page 59

1 have been making?
2 A. I understand that it was considered a leave of
3 absence. It was not considered a separation of
4 employment or position. I'm not sure how he put it. He
5 and I spoke at length about that. It was just considered
6 a leave of absence. He came back into the position that
7 he was at before.
8 Q. Let me draw your attention to Merit Rule
9 5.0720?
10 A. One more time.
11 Q. Well, you don't have to read that one out
12 loud.
13 A. But tell me where I'm looking.
14 Q. 5.0720.
15 A. Okay.
16 Q. Does that appear to be a Merit Rule requiring
17 that he be rehired at the same rate?
18 A. That's what it appears. Yes. No
19 disagreement. No disagreement with what happened to
20 Keith.
21 Q. You refer in Paragraph 14 of your complaint to
22 the results of Limited Maintenance Review, which were
23 announced around May 2000.
24 Is that right?

Page 60

1 A. Mum-hum. Yes.
2 Q. Tell me what is a Maintenance Review?
3 A. Well, my understanding of Maintenance Review
4 is because we were bleeding out scientist -- great --
5 that's going to be on there, too. We were losing
6 scientist due to the fact that they could leave and be
7 hired by consulting firms for significantly higher
8 salaries.
9 We were falling far behind what normal
10 average persons would be paid and people were leaving. I
11 understand that the Limited Maintenance Review came from
12 the fact that Environmental Scientist were being paid
13 much less than Environmental Engineers. We were losing
14 people. This came about by using selective market.
15 Q. Would it be fair to say, State Personnel
16 reviewed the entire DNREC scientist theories, the ES1's
17 to ES4's?
18 A. I have no knowledge of that.
19 Q. Do you know whether the Merit Rules require
20 the director to continuously review the classification
21 plans?
22 A. I don't know that either.
23 Q. Drawing your attention to Merit Rule 3.0100.
24 Does it discuss the grouping of people

Page 61

1 into classes, based on their duties and responsibilities?
2 A. It does. Using the word substantially and
3 essentially.
4 Q. Could you read it?
5 A. The Director as required by law shall
6 establish and maintain a method of classifying all
7 positions in the classified service. Positions
8 substantially alike in duties and responsibilities
9 requiring essentially the same knowledge, skills and
10 abilities, license or professional certification for
11 satisfactory performance, and using the same minimum
12 education and experience requirements, shall be grouped
13 into the same class and the same rates of pay under
14 similar working conditions shall be applicable thereto.
15 A list of approved classifications will be maintained and
16 kept current.
17 Q. That's what the Environmental Scientist series
18 is.
19 Right?
20 A. Okay.
21 Q. A classification. Is that correct?
22 A. That appears to be the case.
23 Q. When the Maintenance Review was done, did you
24 have to do a questionnaire related to your duties,

Ann L. Breslin

17 (Pages 62 to 65)

Page 62

1 responsibilities, education and experience?
 2 A. I don't recall.
 3 Q. And do you recall who the Maintenance Review
 4 applied to, the results of it?
 5 A. I believe to the ES1 through 3.
 6 Q. Was that just in the Division of Air and Waste
 7 Management, do you know?
 8 A. I don't know.
 9 Q. Do you know whether it applied to ES employees
 10 in the Division of Water Resources?
 11 A. I'm not sure. I don't know.
 12 Q. Did your classifications from ES3 change after
 13 the Maintenance Review? You were still an ES?
 14 A. I was still an Environmental Scientist 3 at a
 15 different paygrade, though.
 16 Q. At a lesser or higher paygrade?
 17 A. Higher paygrade.
 18 Q. Now, you say in Paragraph 16 of your complaint
 19 that you sent an E-mail to Merrilyn Ramsey about the time
 20 that the results of the Maintenance Review were
 21 announced.
 22 Is that right?
 23 A. Yes.
 24 Q. Do you have a copy of that E-mail?

Page 63

1 A. I do.
 2 Q. I believe your characterization from your
 3 complaint is that your concern was you were still going
 4 to be paid at an entry-level salary.
 5 Is that correct?
 6 A. Yes.
 7 Q. You find that somewhat insulting; don't you?
 8 A. Well, I believe considering I was doing the
 9 same work as Keith, it was unfair. I should be
 10 compensated, as Keith was being compensated.
 11 Q. Were there other people in ES3 positions in
 12 the Division of Air and Waste Management being paid the
 13 same salary as you?
 14 A. There were several other people that were
 15 hired post-'93. To my knowledge, none of them had
 16 advanced degrees. I can only speak directly to the
 17 specific job description. And you were calling them
 18 selectives. But, basically, we don't write permits. We
 19 don't count fish. We clean up hazardous sites. That's a
 20 very specific thing that SIRB does.
 21 Q. You run the SIRB program?
 22 A. Yes. So, when you say Air and Waste
 23 Management, there is a universe of Environmental
 24 Scientist under Air and Waste management, pre and

Page 64

1 post-'93 hire. Different paygrades. Different
 2 educational backgrounds, doing different things. I can
 3 specifically say, I can talk about SIRB, specifically.
 4 Q. Do you think it is fair to say in the
 5 hazardous waste branch, the ES3's run the hazardous waste
 6 program?
 7 A. In RCRA. There are delegated RCRA. They do
 8 inspections. They don't necessarily run the program.
 9 There have been issues with EPA in their involvement with
 10 RCRA.
 11 Q. Is that a yes or no?
 12 A. I don't think it is a yes or no. It is a much
 13 more complicated question than you are putting to me.
 14 Q. In Paragraph 17 of your complaint you say you
 15 are a member of ES workgroup.
 16 What was that?
 17 A. We were just talking pretty much formally and
 18 informally about the fact that they were, as I said
 19 before, bleeding out Environmental Scientist.
 20 Q. Who is "we?" Who is in the ES workgroup?
 21 A. Right now, the only person I can remember is
 22 -- I can't remember -- I can't believe I forgot her name.
 23 Q. Marjorie Crofts?
 24 A. Yes. Marjorie Crofts.

Page 65

1 Q. Did she work for SIRB?
 2 A. She was the assistant director, I think, is
 3 her title for Air and Waste Management.
 4 Q. That's a no then.
 5 Right?
 6 A. No.
 7 Q. Were there other people that you can't
 8 remember the names of?
 9 A. Certainly. We were not the crew, the two of
 10 us. I know there were quite a few people on it. There
 11 were a couple of guys from RCRA on it. I can see their
 12 faces, but I can't come up with their names.
 13 Q. You say that you met formally and informally
 14 because you were bleeding Environmental Scientist.
 15 What was the purpose of the group?
 16 A. Basically, to try to bring our salaries up
 17 within shooting range of Environmental Scientist in the
 18 real world. So, we would keep people in. We would
 19 entice people to apply. We would keep them longer than
 20 three to five years.
 21 Q. Was there anybody there from "UTZ" (phonetic)
 22 in your workgroup?
 23 A. Maybe Jo Hall. I don't know. She was on a
 24 lot of different committee.

Ann L. Breslin

18 (Pages 66 to 69)

Page 66

1 Q. Anybody there from Air?

2 A. I don't recall. We met a couple of times, and
3 I started the grievance process and I quit. I keep
4 everything. I'm sure I have notes and lists somewhere.

5 Q. When did you hear of the concept of leveling
6 up?

7 A. I know it was through DelDOT. DelDOT was
8 leveling up. And honestly, it became part of our
9 vocabulary in SIRB. That is the best that I can do to
10 remember.

11 Q. Explain to me what you mean by it became part
12 of your vocabulary?

13 A. We talked about leveling up. Alex kept
14 talking a lot about leveling up.

15 Q. Did you have an idea of what he meant by that?

16 A. Yes. It was, basically, to bring those of us
17 that had been in the position for a lot of years up to a
18 more equitable salary.

19 The conversations with Alex,
20 specifically, were Environmental Scientist 2's that had
21 some issues and me, regarding me, specifically.

22 Q. Drawing your attention back to that Merit Rule
23 that I asked you to read and then asked you not to read.
24 Merit Rule 5.0712. I will ask you to read it again. I'm

Page 68

1 A. I believe that the cert that came in may or
2 may not have been filled. But I was one of the subject
3 matter experts. And the applicants that we were getting
4 -- you know -- just because someone has a Ph.D. in
5 something does not mean they are qualified to be cleaning
6 up hazardous sites.

7 Q. Is it fair to say that is because the degree
8 does not necessarily translate into their ability to do
9 something?

10 A. Well, if they have not had on-the-job
11 training, and they don't have an applicable Ph.D., or a
12 Master's degree in the field of geology, biology, or
13 environmental science, and you're applying for a SIRB
14 position and you have a Ph.D. in, let's see, radiation,
15 we don't do radiation very much. We would carry around
16 pancake probe years past. But specifically, if you have
17 a degree, Ph.D. in radiation, you may not be able to
18 clean up hazardous sites.

19 Q. Does that mean you are not capable of being
20 trained to?

21 A. If you spend lots of years in the position,
22 you can train probably 30 percent of the people. Some
23 people are untrainable.

24 Q. Is there a difference between the optimum

Page 67

1 sorry. It makes more sense now.

2 A. Still says the same thing.

3 Q. Can you read it?

4 A. The appointing authority may request, and the
5 State Personnel Director may approve, a starting rate
6 higher than the minimum for the paygrade where a critical
7 shortage of applicants exists. The State Personnel, in
8 concurrence with the State Budget Director and the
9 Controller General, after specifying all equally
10 qualified incumbents of the same classification within
11 the same geographic area receiving a lower rate, may
12 provide that these employees shall have rates increased
13 to the rate established for entrance if their performance
14 is satisfactory.

15 Q. Is that the leveling up rule?

16 A. I don't know. I honestly don't. I am not
17 sure that is what they were referring to with leveling
18 up.

19 Q. You said that you were losing Environmental
20 Scientist.

21 Is that right?

22 A. Yes.

23 Q. To your knowledge, were you having problems
24 getting new ones?

Page 69

1 candidate for a position and one who meets the minimum
2 causal qualifications?

3 A. I would assume so. But I am a scientist. I'm
4 not in personnel.

5 Q. In Paragraph 18 of your complaint, you state
6 that Paul Will, Alex Rittberg and Christina Wirtz agree
7 that the rehiring of Mr. Robertson to his original
8 position was the perfect opportunity to attempt to amend
9 the salary disparity.

10 Can you please explain the basis of that
11 statement?

12 A. Well, Paul is sitting in this chair. Alex is
13 standing to my right. Christina is standing to my left.
14 We were discussing Keith coming back, being very glad
15 that Keith was coming back, because no one wanted to deal
16 with Dover Air Force Base. And Alex brought up or said
17 that he was going to try to get a little bit more money
18 for Keith because there were some issues with another
19 gentleman being paid \$20 more a month than him and it
20 bothered him. We had already been working through this
21 issue, the fact that I was entry level after all of those
22 years, it was a natural progression of the conversation.

23 Q. So, Keith, you are saying Keith was bothered
24 by the fact that someone else was making \$20 a month more

Ann L. Breslin

19 (Pages 70 to 73)

Page 70

1 than him?
 2 A. It was kind of a joke. Alex was trying to get
 3 him a little bit more money when he came back.
 4 Q. Did it work?
 5 A. No.
 6 Q. Do you know why it did not work?
 7 A. Actually, I only know what Keith told me.
 8 Q. What did Keith tell you?
 9 A. It just did not work.
 10 Q. Who did he say made it not work? Apparently,
 11 his manager wanted it to work?
 12 A. Personnel.
 13 Q. Human resources?
 14 A. Yes.
 15 Q. In Paragraph 19 of your complaint you state
 16 that on or about May 17th, plaintiff's immediate
 17 supervisor at the time, Mr. Paul Will, drafted a
 18 memorandum to the acting director of Air and Waste
 19 Management?
 20 A. We spoke about that a while ago. I explained
 21 the chain with that.
 22 Q. Is that statement true?
 23 A. The statement is, essentially, true. Yes.
 24 Q. Tell me what is not exactly true about it?

Page 71

1 A. Well, it's true. But by further explanation,
 2 it was, as I explained before, I have to repeat, Alex had
 3 the original templates that he used. He made some
 4 modifications to it. He forwarded to me and also to
 5 Christina Hendershot. She was doing something to try to
 6 become a 3. I have E-mails for that. I made some
 7 changes. Added some information from my original
 8 advanced hire request back in '96. I sent it onto Alex.
 9 Alex made some revisions. Sent it to Christina to make
 10 revisions. Forwarded to Paul, the E-mail. Noted in the
 11 E-mail that I was going to print it out for review,
 12 approval and changes, since he was making, or it was
 13 coming from him. As is common practice. We generally --
 14 any types of these things that talk about our own
 15 experiences.
 16 For example, the one from Keith, when he
 17 was hired, again, was written primarily by Keith. No
 18 one knows better your experiences and abilities than you
 19 do. It is common practice. Proposed plans. Final
 20 plans. Letters. Anything else. They may come from the
 21 manager. But the bulk of the information is included by
 22 the staff member themselves. The manager, as in this
 23 case, reviewed, made some changes. I wish I had his
 24 copy. He makes pen changes. I kept everything. For

Page 72

1 some reason, I did not keep that. I still may have it.
 2 I'll have to keep looking for it. Sent it back to me. I
 3 made the changes that he made.
 4 Evidently, him and Christina were out of
 5 the office for some reason. I had spoken to him about
 6 it. And, I think, Alex had talked to him about it.
 7 Somebody talked to him about Alex signing them. Alex
 8 signed for both Christina and Paul. And the thing went
 9 out.
 10 MS. BREWINGTON: Off the record.
 11 (An off-the-record discussion took place
 12 at this time.)
 13 MS. CSIZMADIA: Back on the record.
 14 BY MS. CSIZMADIA:
 15 Q. I'm slightly confused. I thought that was --
 16 A. You're not confused at all. Don't BS me.
 17 Q. I sort of am. You said earlier the chain that
 18 you were referring to, I was asking you about your
 19 initial advanced hire request.
 20 A. No. You said right here -- right here.
 21 MS. BREWINGTON: I think we're confused.
 22 You're talking about earlier, the
 23 earlier question?
 24 MS. CSIZMADIA: Previously.

Page 73

1 MS. BREWINGTON: In the deposition.
 2 Yes.
 3 MS. CSIZMADIA: And, I think, you were
 4 referring to this.
 5 BY MS. CSIZMADIA:
 6 Q. I asked you who wrote the advanced hire
 7 request before, and you gave me a similar explanation?
 8 A. Oh. You mean, the 1996 advanced hire request?
 9 Q. Yes.
 10 A. The 1996 advanced hire request was written
 11 using Keith's template from Janie and Karl and I wrote it
 12 together. Karl approved it, signed it and sent it down,
 13 as he did with this. The one.
 14 MS. BREWINGTON: We're clear.
 15 MS. CSIZMADIA: Okay. Let's take a
 16 break.
 17 (Off the record at, approximately, 12:50
 18 p.m.)
 19 (Back on the record at, approximately,
 20 1:00 p.m.)
 21 MS. CSIZMADIA: Back on the record.
 22 Mark this as No. 9.
 23 (Document dated May 17, 2001 was marked
 24 as Breslin Exhibit No. 9 for identification.)

CORBETT & WILCOX

B-0085

Ann L. Breslin

20 (Pages 74 to 77)

Page 74

1 BY MS. CSIZMADIA:
 2 Q. I just showed you a document. Is that the one
 3 that you talked about? The collaboration of writing?
 4 A. From Paul Will to Bill Hill to Christina.
 5 Yes.
 6 Q. Because Paul Will did not draft that.
 7 Correct?
 8 A. He as all of the others managers and I drafted
 9 it together. It was, like I said, common practice for
 10 everybody to work on the same document together.
 11 I must say, I'm disappointed in his
 12 response to that, but it is what it is.
 13 Q. So, if he said you presented to him and asked
 14 him to sign it, that is not a fair characterization?
 15 A. No. That is not correct.
 16 MS. BREWINGTON: Objection. Calls for
 17 speculation.
 18 BY MS. CSIZMADIA:
 19 Q. Do you know if he read it before he signed it?
 20 A. Yes. He read it. Absolutely. He also made
 21 changes in pen to it.
 22 Q. In Paragraph 20 of your complaint you refer to
 23 a response from Deputy Director Marjorie Crofts?
 24 A. Yes.

Page 75

1 Q. Do you have a copy of that?
 2 A. I do.
 3 Q. Who was your manager in December of 2001?
 4 A. Paul was my manager. I was working on sites
 5 that both Paul and Alex were PM1's for, program manager
 6 one's for, but I was primarily Paul's managee.
 7 Q. And Christina Wirtz, did she supervise both of
 8 those managers?
 9 A. That's correct.
 10 Q. Was she on the ES1 Group?
 11 A. Christina?
 12 Q. Yes.
 13 A. I don't know.
 14 MS. CSIZMADIA: Mark this as Breslin 10.
 15 (Document dated December 10, 2001 was
 16 marked as Breslin Exhibit No. 10 for identification.)
 17 BY MS. CSIZMADIA:
 18 Q. Did Christina ask for The Department to review
 19 your salary situation in a memo dated December 10th?
 20 A. Yes.
 21 Q. Are you familiar with this document?
 22 A. Yes.
 23 Q. That's the document I just referred to; is it
 24 not?

Page 76

1 A. Yes.
 2 Q. How long have you and Christina been
 3 discussing a mechanism for increasing your salary?
 4 A. I don't recall exactly how long. Shortly
 5 after she came to SIRB. I don't know when that was.
 6 2000. 1999. I am not 100 percent sure when she came.
 7 Q. And this memo, is it dated December of 2001?
 8 A. December 10, 2001.
 9 Q. You both were pretty determined to find a way
 10 to get your salary increased; weren't you?
 11 A. Well, I think Christina, as a good manager,
 12 realized that Keith and I were not doing the same job,
 13 and there was no reason why our salaries should be so
 14 different. And, I think, she as a good manager realized
 15 that it was an issue that needed to be dealt with.
 16 Q. Is that a yes or no?
 17 A. Determined. The way you say it sounds like,
 18 at any risk of anything they would do that. So, I would
 19 say, I don't agree with your phrasing. I do agree with
 20 what I just stated.
 21 Q. Which one of you raised the idea of gender
 22 discrimination in your conversations?
 23 A. I don't know.
 24 Q. Did the two of you decide that claiming gender

Page 77

1 discrimination might be a method to get your salary
 2 raised?
 3 A. I don't think so. No. I think it was
 4 something that she looked at everybodys salary and was
 5 concerned about it as I was.
 6 Q. Who thought you had been discriminated
 7 against?
 8 A. I definitely thought I was being discriminated
 9 against. I believe Christina believed that I was being
 10 discriminated against.
 11 Q. Who drafted this December 10, 2001 memo?
 12 A. Again, all you have to do is look at the
 13 things are laid out to understand. The bulk of the
 14 experience and information, probably, maybe a little over
 15 half of it, was from my direct experience and my
 16 drafting. And the rest she put in.
 17 Q. Do you remember who initially drafted it? Are
 18 you saying you drafted it and she added things?
 19 A. Well, if you look right in the back, it will
 20 tell you how it is choned. It looks like it is a
 21 merging of two documents. Christina's choned and my
 22 choned. I'm assuming my choned was this last bit, back
 23 here explaining my positions. And the front --
 24 MS. BREWINGTON: For the record, she is

Ann L. Breslin

21. (Pages 78 to 81)

Page 78

1 pointing to the second page of the document.
 2 THE WITNESS: Yes. A lot of times it
 3 will depend on -- for example, someone may develop a
 4 document and E-mail to it another person. That person
 5 may chron it under their own position. Here showing two
 6 chron numbers. My assumption is she took my chroed
 7 document and also used her.

8 MS. CSIZMADIA: Mark this as Exhibit 11.
 9 (Document entitled Memorandum dated May
 10 17, 2001 was marked as Breslin Exhibit No. 11 for
 11 identification.)

12 BY MS. CSIZMADIA:

13 Q. I want to show you another document.

14 Are you familiar with this document?

15 A. Yes. This looks very much like Christina's
 16 corrections to the document. Again, as I said before, I
 17 said I moved stuff around and sent it around to the other
 18 folks to review. So, that's probably where she got the
 19 original document from. She keeps everything, as
 20 Christina does. Everything that she has edited.

21 Q. Whose handwriting is all over it?

22 A. Well, some is mine. But it looks like
 23 Christina's handwriting, from what I remember.

24 Q. The bullets in the upper right-hand corner,

Page 79

1 whose handwriting is that? Where it says, main thrust
 2 should be sexual discrimination. His Master's counted,
 3 yours did not. Or just less experience.

4 A. Christina.

5 Q. Can you look through it and find where it
 6 talks about gender discrimination before these changes
 7 were made to the document?

8 A. I know there would not be. In the original
 9 one, it was a simple request for an advanced hire from
 10 Paul.

11 Q. I don't understand. Can you explain that?

12 A. Well, since the original document, she is
 13 listing this from, in other words, the information of my
 14 experience in the back is from the document.

15 Q. From the advanced hire?

16 A. 2001 advanced hire document. That is the one
 17 that Alex initially wrote. I edited. Alex edited again.
 18 Christina edited. Paul edited. We sent it out with
 19 Alex's signature.

20 Q. Let me draw your attention to Bullet No 4, or
 21 Bullet No. 2. Years of experience performing this
 22 Principal Accountability, seven years.

23 That could not have come from yours
 24 earlier; could it?

Page 80

1 MS. BREWINGTON: Could you hold on one
 2 second. Before you answer that question, point me to
 3 where you are.

4 MS. CSIZMADIA: I am on the third page.
 5 It says, May review complex permitting applications,
 6 technical reports or other submissions.

7 MS. BREWINGTON: It's a bullet?

8 MS. CSIZMADIA: Heading.

9 MS. BREWINGTON: Number two.

10 MS. CSIZMADIA: Then there is a sentence
 11 right underneath of it. Years of experience performing
 12 this Principal Accountability, seven years. It is not
 13 marked up.

14 BY MS. CSIZMADIA:

15 Q. This piece could not have come from yours
 16 earlier; could it?

17 MS. BREWINGTON: It says here -- this is
 18 exactly -- I am looking at Breslin 9.

19 THE WITNESS: This is from Paul's 2001
 20 submission.

21 MS. BREWINGTON: And if we compare the
 22 two --

23 BY MS. CSIZMADIA:

24 Q. This is a draft of the memo that Paul Will

Page 81

1 signed.

2 Correct?

3 A. This, no. This is not a draft of the memo
 4 that Paul Will signed.

5 This is what Christina used as the basis
 6 of the memo stamped confidential.

7 So, as of 2001, seven years of
 8 experience is correct. Six, seven. Seven years.

9 Q. Reading Christina's point where she is saying
 10 that the main thrust should be sexual discrimination, who
 11 is she noting that for, do you know?

12 A. (Witness nodding.)

13 Q. Did you get this back from her marked up like
 14 this?

15 A. No.

16 MS. BREWINGTON: The first answer to
 17 your question, I think you asked something and she shook
 18 her head. I wanted it on the record.

19 If the court reporter can read that
 20 back.

21 (The court reporter was requested to
 22 read back from the record.)

23 BY MS. CSIZMADIA:

24 Q. Did you talk to John Blevins, the Director of

Ann L. Breslin

22 (Pages 82 to 85)

Page 82

1 Air and Waste Management, concerning the request that
 2 your salary be reviewed?
 3 A. Yes.
 4 Q. And how did that go?
 5 A. He was supportive, but not hopeful.
 6 Q. And did he express why he was not hopeful?
 7 A. I believe that it was probably because of the
 8 fact that the state was going through a budget crunch.
 9 Q. You're saying that you believe it was
 10 probably. If you're just guessing, please tell me you
 11 don't know?
 12 A. I don't know. I guess I don't know
 13 specifically.
 14 Q. So, the Director of Air and Waste Management,
 15 John Blevins, sent a memo asking human resources to
 16 review your salary.
 17 Right?
 18 A. That's my understanding. Yes.
 19 Q. And then in your complaint at Paragraph 26,
 20 you say that Merrilyn Ramsey, the human resource manager,
 21 sent a memorandum dated August 16, 2002 to Christina
 22 Wirtz.
 23 Is that correct?
 24 A. Yes.

Page 83

1 Q. Is this the memo that you were referring to?
 2 A. Yes.
 3 MS. CSIZMADIA: Will you mark that as
 4 the next exhibit, please.
 5 (Document dated August 16, 2002 was
 6 marked as Breslin Exhibit No. 12 for identification.)
 7 BY MS. CSIZMADIA:
 8 Q. And what was the response?
 9 A. No.
 10 Q. And the reason given?
 11 A. My salary falls within the range of others
 12 with her experience and credentials.
 13 Q. Does it say that Mr. Robertson had more
 14 credible, applicable experience?
 15 A. It does say that. Yes.
 16 Q. Are you familiar with this document?
 17 A. Yes. I have a copy of it, of course. It came
 18 from me.
 19 Q. What is it?
 20 A. Basically, notifying those guys that I would
 21 be jointly filing a grievance with the Department of
 22 Labor.
 23 Q. And those guys are Paul, Christina and Alex?
 24 A. Yes.

Page 84

1 Q. And are you thanking them for supporting you?
 2 A. That's what I say. I want to thank the three
 3 of you for supporting me over the past few years.
 4 Q. And in your memo you talk about Qazi and
 5 Keith?
 6 A. Yes.
 7 Q. But today you're telling me you're concerning
 8 yourself with Keith Robertson and not Qazi.
 9 Correct?
 10 A. Well, Qazi has a Ph.D. He's not a manager.
 11 Whether a Ph.D. is worth \$20 a month more is not
 12 something I can discuss. But Keith was hired with a
 13 Master's degree two weeks after me. He is doing the same
 14 job.
 15 Q. The memo says that you are filing the
 16 grievance and you are going to talk to the Department of
 17 Labor.
 18 Correct?
 19 A. Yes.
 20 Q. You actually abandon in your complaint about
 21 Qazi during the grievance process.
 22 Isn't that correct?
 23 A. I didn't abandon it, per se. My attorney
 24 thought that the best thing to do is just to concentrate

Page 85

1 to the person that was equal to me.
 2 Q. And that's still your position?
 3 A. Yes.
 4 MS. CSIZMADIA: You can mark that as 13,
 5 and you can mark this one as 14.
 6 (E-mail dated September 11, 2002 was
 7 marked as Breslin Exhibit No. 13 for identification.)
 8 (Document dated September 11, 2002 was
 9 marked as Breslin Exhibit No. 14 for identification.)
 10 BY MS. CSIZMADIA:
 11 Q. I will show you another document.
 12 Is this the grievance that your attorney
 13 filed on your behalf?
 14 A. Yes.
 15 Q. And a grievance is an appropriate mechanism
 16 for arguing that the Merit Rules have been violated.
 17 Is that correct?
 18 A. I think it's one of the mechanisms.
 19 Q. Would it surprise you if the Merit Rules said
 20 it is the only mechanism?
 21 A. Very little would surprise me these days.
 22 Q. The relief that you asked for in your
 23 grievance is a leveling up.
 24 Is that right?

Ann L. Breslin

23 (Pages 86 to 89)

Page 86

Page 88

1 A. Leveling of pay with other Environmental
2 Scientist 3 incumbents who do precisely the same work as
3 the grievant.

4 Q. What is the rest of the sentence?

5 A. February 1, 2002.

6 Q. That is the point in time that you asked for
7 the leveling up to be applicable in your grievance?

8 MS. BREWINGTON: Objection.

9 BY MS. CSIZMADIA:

10 Q. So, is that the point that you asked for the
11 money?

12 A. This is what my attorney wrote in the letter.
13 Not for money wise, for back pay and things like that,
14 no. This is what my attorney wrote. This is what my
15 attorney wrote as of this date to bring my pay up.

16 Q. And you filed that grievance on the same day
17 that you sent the E-mail. Your attorney filed the
18 grievance on the same day you sent the E-mail.

19 Is that right?

20 A. Yes.

21 Q. Now, in Paragraph 287 of your complaint, you
22 say with no other administrative remedy available to her?

23 A. 287?

24 Q. I'm sorry. Paragraph 28. I type too fast

1 three similarly situated males.

2 Who are you referring to there?

3 A. Keith and Qazi. And don't ask me how to spell
4 his last name. Salahuddin, or something to that effect.

5 Q. We already ascertained that you are talking
6 about Keith now.

7 Right?

8 A. Specifically about Keith, for purposes of the
9 quality.

10 Q. Now, going back to your E-mail dated September
11 11. It is Exhibit 13, I believe. Can you read out loud,
12 please, the last sentence of the first paragraph?

13 A. According to my attorney, the DOL will be
14 comparing my pay to those ES IIIs in SIRB, not ES IIIs in
15 DNREC, who complete the same duties, namely Qazi and
16 Keith, who are being paid substantially more per year.

17 Q. Why did you tell Paul, Christina and Alex
18 that?

19 A. Why did I tell them that?

20 Q. Yes.

21 A. Because of the facts.

22 Q. Why was it significant to point out?

23 A. So I could be accurate and have it for the
24 record.

Page 87

Page 89

1 sometimes. Paragraph 28.

2 You say with no other administrative
3 remedy available to her, plaintiff filed a charge of
4 discrimination?

5 A. That's what my attorneys have written.

6 Q. And was that correct?

7 A. That's what my attorneys have written.

8 Q. At that time, was your appeal, your
9 administrative grievance ongoing?

10 A. I believe we were close to the first step.

11 Q. Is your attorney wrong, then?

12 A. This comes from my attorney. This is an
13 attorney question. There's lots in here that are forms.
14 There's lots in here that say codes. And if you asked me
15 about 40 CFR Part 300, I can tell you everything. But
16 the rest of it, that's why I have attorneys.

17 Q. Did you read it for factual accuracy before it
18 was filed on your behalf?

19 A. Of course, I did. But like I said, I have
20 attorneys.

21 Q. So, you don't know that a grievance is an
22 administrative remedy?

23 A. I have no opinion one way or another.

24 Q. In Paragraph 21 of your complaint you refer to

1 Q. Was it also because you knew there were other
2 ES3's in The Department that were females who were being
3 paid higher?

4 A. Not in SIRB. No.

5 Q. I'm not talking about just SIRB.

6 A. Well, I was talking about SIRB.

7 Q. Right. And I'm asking you why you felt the
8 need to clarify that you were just talking about SIRB?

9 A. Because these are people that were hired
10 post-'93 with the same pay scale as I am. You have to
11 compare apples to apples.

12 First you have to find out when were
13 they hired. They were hired pre-'93, pre-'94, pre-'93,
14 somewhere around there. Pre-'93 was a different pay
15 scale, as was Larry Jones, Kurt Olinger, Rob Allen.
16 Those guys were hired on a different pay scale. Larry
17 would be maybe \$10,000 or \$12,000 more per year. He was
18 hired on a different pay scale. Take those people out.
19 You have to talk apples and apples. Not apples and
20 lemons.

21 Then, after that, you have to talk about
22 the specific technical abilities of those folks in SIRB.

23 Q. And why --

24 A. What are people supposed to do --

CORBETT & WILCOX

B-0089

Ann L. Breslin

24 (Pages 90 to 93)

Page 90

1 MS. BREWINGTON: Can she finish what her
2 thought was?
3 THE WITNESS: What do people in SIRB do.
4 Well, we investigate, remediate, secure hazardous sites.
5 We work with the EPA to do such. We have something
6 specific. Again, we don't count fish. We don't do RCRA
7 inspections. We do something very specific.
8 So, here is a guy that was hired two
9 weeks after me with a Master's degree doing the exact
10 same job as I was doing.
11 So, for accuracy sake, and to be
12 inclusive in what I was talking about, I wrote that down.
13 Now, I have from the beginning, I have
14 requested this several times -- if you're going to say
15 there are other women as ES3's that are being paid more
16 than me, I need to know their exact job description, when
17 they were hired, and their educational background, so we
18 could find out if we are dealing with apples and apples
19 or apples and lemons.
20 You just can't say, here is a woman.
21 She was hired in '88. Well, two percent, two percent,
22 two percent, two percent, plus a different pay scale.
23 Totally different issue.
24 BY MS. CSIZMADIA:

Page 91

1 Q. That's your opinion.
2 Correct?
3 A. That's the facts.
4 Q. Well, you sound like you're an expert in
5 personnel now, which you tell me you're not?
6 MS. BREWINGTON: Objection.
7 Argumentative.
8 THE WITNESS: I know the facts that are
9 applicable of my case. If you have a different pay
10 scale, you have a different pay scale.
11 BY MS. CSIZMADIA:
12 Q. When you talk about adding the two percent
13 every year, that is also added to the minimum of the pay
14 scale?
15 A. That's correct.
16 Q. So, that would not change it.
17 Correct?
18 A. But if they start at a different pay scale.
19 Say, for example, I'm not 100 percent
20 sure, but I think ES3 went from like 13 -- 15 to 13 back
21 to 15 again. I'm in the GS system now. I don't remember
22 exactly what that is. If you have somebody whose base
23 salary is \$50,000, and the next year you take selective
24 market away and the base salary for an ES3 is \$30,000,

Page 92

1 you can't compare those people.
2 Q. I didn't know I asked that question.
3 So, there are a couple of critical
4 points with respect to your salary.
5 Correct?
6 A. Yes.
7 Q. One of them was in 1994, when you were hired.
8 And you did not grieve the denial of the advanced hire
9 request.
10 Right?
11 A. I don't think I had 1994 advanced hire. I may
12 have, but it was a long time ago.
13 Q. When you were hired as an ES3, when was that?
14 A. 1996. 1997. Sorry. End of '96, beginning of
15 '97.
16 Q. So, why didn't you grieve the denial of the
17 advanced hire request in '96?
18 A. Well, there's two reasons. When I signed
19 accepting that salary, if the letter had said -- in fact,
20 I have the original letter here -- Dear, Ann Breslin, by
21 signing on the dotted line, you accept that forever and
22 above, six years down the road, you will continue to make
23 entry level and you will never be paid any more than
24 entry level, I would have never signed it.

Page 93

1 The assumption is, once you get into
2 your job, once you move through the ranks, your salary
3 goes up from entry level. First assumption.
4 And the second thing is, I did talk
5 about grieving it. Either Jamie or Steve, Steve Williams
6 or Jamie Rutherford said to me, Why don't you grieve it.
7 So, I went to Karl, and Karl said, not a good idea. You
8 can if you want, but you will be labeled as a
9 troublemaker if you do that.
10 So, separately, I went to N.V. Raman. I
11 explained the same thing to him. He said exactly the
12 same thing to me. Well, you can if you want. Realizing
13 I would have no management support, realizing that I was
14 two years into, or three years into a new job, I most
15 likely should have grieved it at that point. I was
16 afraid. I felt intimidated. Both of my managers had
17 told me, grieving it would label me as a troublemaker.
18 I continued to try to work through the
19 system, without having to go legal. It was a choice I
20 made.
21 Now, hindsight being 20/20, absolutely,
22 I should have done it.
23 I would say, too, at my step three
24 grievance, I was told that my grievance was not time

Ann L. Breslin

25 (Pages 94 to 97)

Page 94

Page 96

1 barred, or whatever, just because of the fact that -- I
2 don't know what is the proper term to put it --
3 basically, the hearing officer said, the decision was for
4 and against. No, I don't think she has been
5 discriminated against. But the state was saying, DNREC
6 was saying, she is not being discriminated, and she
7 waited too long. The step three grievance said I did not
8 wait too long.

9 MS. BREWINGTON: Step three?

10 THE WITNESS: Step three of my grievance
11 process.

12 The fact of the matter is, I should have
13 done it right away, but I didn't. It is what is it.

14 BY MS. CSIZMADIA:

15 Q. Are you done?

16 A. Yes.

17 Q. I thought the step three grievance was the one
18 where you said it was completely bias against you, and it
19 felt like old home week?

20 A. Definitely did. Yes.

21 Q. But you won part of your grievance?

22 A. I did. I think it was pretty obvious from the
23 look on my face when I walked in there that I was pretty
24 disappointed by the chattiness of the situation.

1 before.

2 Q. Second critical point is when you requested
3 leveling up of salary and it was denied.

4 Is that fair?

5 A. What?

6 Q. When your managers asked for your salary to be
7 leveled up to Keith's in and around 2000?

8 A. Yes.

9 Q. Was that another critical point in your pay
10 situation at DNREC?

11 A. I lost the first --

12 Q. The first one was when you --

13 A. I mean, what's the point? I lost the point.

14 What was the critical point of?

15 Q. I'm trying to understand when you were
16 discriminated against.

17 Can you tell me when you were
18 discriminated against?

19 A. I think at the beginning.

20 Q. At the very beginning?

21 A. And continuing on with the management.

22 Q. Which management?

23 A. With Karl.

24 Q. You believe Karl discriminated against you?

Page 95

Page 97

1 It's pretty clear, though, and my
2 attorney was pretty clear with it, too, once my final no
3 was said, that is when the clock started, and they agreed
4 with that.

5 Q. And this was the decision, the step three
6 grievance was the decision that immediately proceeded
7 your decision to not continue with the appeal? I'm just
8 trying to understand. Earlier you told me that
9 everything, basically, was stacked against you, and that
10 you were not getting a fair hearing.

11 Is that correct?

12 A. That's correct. I do believe that I made the
13 decision at that point in time not to go to the Merit
14 Review because when I walked in -- again, I will repeat
15 myself -- when I walked in, Steve and Marilyn were
16 chatting away with the hearing officer like they were old
17 friends. And I knew immediately that me winning, and I
18 didn't, I lost, I lost the grievance. I did get a
19 positive reading by, no, it did not take her that long,
20 which gave me the ability to move to the next step, which
21 is my understanding, but I lost the grievance.

22 So, even though I had that little tidbit
23 of yeah, I did not wait too long, I still lost the
24 grievance. Completely consistent with what I said

1 A. Yes. Of course. He did not fight for me as
2 he should have fought for me.

3 Q. Anyone else?

4 A. I just talked about Karl. That's all.

5 Q. And you believe Karl did that because you were
6 a female?

7 A. Yes.

8 Q. And you're referring all the way back to when
9 he hired you as an ES3?

10 A. When I was competitively hired. Yes. '96/'97
11 time frame.

12 Q. It wasn't the human resources office that
13 discriminated against you?

14 A. That, I can't say. I never had any dealing
15 with them at that point in time.

16 And it's impossible to ask Sharon what
17 she was thinking. Sad for her is good for you guys.

18 Q. I absolutely disagree with that. I'm offended
19 that you say that. I would like to get a glass of water.

20 A. I heard through the grapevine that DNREC's
21 plan was to blame a woman that was incapacitated. I
22 heard it from two separate people. And that hurt me so
23 bad.

24 Q. Can you name those people?

CORBETT & WILCOX

B-0091

Ann L. Breslin

26 (Pages 98 to 101)

Page 98

1 A. No. I will not name those people. I could
2 not believe it. I said, you got to be kidding me. And
3 that, to me, is a woman that, for all intents and
4 purposes, has no way of defending herself.
5 Q. Can you, please, name those people?
6 MS. BREWINGTON: I will object on the
7 grounds of relevance.
8 And I would like to go off the record
9 and have a conference with my client.
10 MS. CSIZMADIA: Yes.
11 (Off the record at, approximately, 1:50
12 p.m.)
13 (Back on the record at, approximately,
14 1:55 p.m.)
15 MS. CSIZMADIA: Back on the record.
16 BY MS. CSIZMADIA:
17 Q. Ms. Breslin, we just took a break so you can
18 talk to your attorney.
19 Did you discuss anything other than the
20 last piece, when we were talking about Sharon Tazelaar?
21 A. No.
22 Q. Ms. Breslin, your step one grievance was
23 before John Blevins.
24 Is that correct?

Page 99

1 A. Yes.
2 Q. He is the one that said he would look into the
3 matter for you and sent a memo saying he would do the
4 right thing for you.
5 Is that correct?
6 A. Yes.
7 Q. Were you represented at the hearing?
8 A. I'm not sure. Let me look at my file. I
9 think I was. I'm not sure.
10 Q. Mr. Shields had filed the appeal.
11 Is that right?
12 A. Yes.
13 Q. Was he at the hearing?
14 A. I'm just trying to determine that right now.
15 Yes. It appears he was there.
16 Q. Was there evidence at the hearing that in the
17 Division of Air and Waste Management female Environmental
18 Scientists were paid a slightly higher salary than males?
19 A. Repeat the question.
20 Q. Was there evidence at the hearing, the step
21 one grievance hearing, that in the Division of Air and
22 Waste Management that female Environmental Scientist 3's
23 had a slightly higher average salary than male
24 Environmental Scientist 3's?

Page 100

1 A. There is a note here not specifically saying
2 in SIRB that that was the case. But, yes, throughout Air
3 and Waste Management, that was the case.
4 Q. Was there a written decision? Well, pardon
5 me.
6 Was there also evidence at that hearing
7 that six male Environmental Scientist 3 in the Division
8 of Air and Waste Management were paid the same salary as
9 you?
10 A. That was the statement here. Yes.
11 Q. Have you seen the written decision -- the
12 result of John Blevins written decision?
13 A. I have a faxed copy of it. I don't have an
14 original like this.
15 MS. CSIZMADIA: Mark this as 15.
16 (Document dated October 29, 2002 was
17 marked as Breslin Exhibit No. 15 for identification.)
18 BY MS. CSIZMADIA:
19 Q. Does the written decision that you have
20 identified that's Exhibit 15 say that?
21 A. Say what?
22 Q. That female Environmental Scientist have a
23 slightly higher average of \$46,221 than males at \$45,418
24 in the Division of Air and Waste Management?

Page 101

1 A. Within the Division of Air and Waste
2 Management. Not within SIRB, specifically.
3 Q. Did Mr. Blevins find any sexual
4 discrimination?
5 A. John says The Department has not engaged in
6 sexual discrimination.
7 Q. You filed an appeal of that decision; did you
8 not?
9 A. I did.
10 Q. You had a hearing before Deputy Secretary
11 David Small?
12 A. Yes.
13 Q. Were you represented by an attorney at that
14 hearing?
15 A. I was.
16 MS. CSIZMADIA: Mark this as 16.
17 (Document dated November 22, 2002 was
18 marked as Breslin Exhibit No. 16 for identification.)
19 BY MS. CSIZMADIA:
20 Q. Was there evidence at the hearing that Keith
21 Robertson and Larry Jones qualifications were
22 distinguishably different than yours?
23 A. The statement was made. The first page looks
24 like my hiring, Keith's hiring and Qazi's hiring. The

Ann L. Breslin

27 (Pages 102 to 105)

Page 102

1 second page appears to be Larry's hiring in '87, Qazi's
2 in 2000 and Keith's in 1994. A statement is made,
3 superior qualifications.

4 Q. And are you familiar with the document that I
5 just placed in front of you?

6 A. I have a copy of that.

7 Q. Is that the November 22, 2002 decision?

8 A. Yes.

9 Q. Does the Deputy Secretary find that you were
10 discriminated against?

11 A. David wrote, The Department's analysis
12 provided herein shows that there are distinguishable and
13 supporting differences in the qualifications of her
14 colleagues which justify their current salaries.

15 There was a mistake. You said Larry,
16 and Larry is not listed in this one at all.

17 Q. I'm sorry.

18 You filed an appeal of that decision?

19 A. My attorney did. Yes.

20 Q. On your behalf?

21 A. Yes.

22 Q. Did you have a hearing before the State
23 Personnel Hearing Officer?

24 A. I did.

Page 104

1 a starting rate higher than the minimum and to level up
2 the salaries of incumbents under certain circumstances,
3 i.e., if there is a critical shortage of applicants. It
4 was not determined that there was a critical shortage of
5 Environmental Scientist applicants, and The Department
6 was not obligated to seek a starting rate higher than the
7 minimum. Accordingly, there has been no violation of the
8 Merit Rules.

9 Q. Where is the decision of the MERB Board that
10 that one could be appeal to?

11 A. Pardon?

12 Q. Where is the decision of the MERB Board that
13 would have heard the appeal of that decision?

14 A. Where is the decision of the MERB Board? I'm
15 not clear.

16 Q. The State Merit Employees Review Board. That
17 is the people who would have reviewed that decision?

18 A. I realize that. What do you mean, what
19 statement?

20 Q. I said, this decision. Where is the decision
21 of the MERB Board?

22 A. We covered the fact that at that point in
23 time, since I had been employed by the State of Delaware
24 or by the Federal Government, and that knowing The

Page 103

1 MS. CSIZMADIA: Mark this as 17.

2 (Document entitled Step Three Grievance
3 Decision was marked as Breslin Exhibit No. 17 for
4 identification.)

5 BY MS. CSIZMADIA:

6 Q. Can you identify this document?

7 A. Yes.

8 Q. Read the statement on Page 3 of that decision,
9 please?

10 A. The paragraph there, top or bottom?

11 Q. Top.

12 A. Based on all the evidence and testimony
13 introduced at the hearing, I am persuaded that The
14 Department has not discriminated against the Grievant as
15 result of her gender when it denied her request to have
16 her salary leveled up.

17 That was a statement from the hearing
18 officer, actually.

19 Q. On the page before that, the paragraph before,
20 can you read that paragraph, too, please?

21 A. The last paragraph or first?

22 Q. The last.

23 A. The hearing officer actually writes, Merit
24 Rule 5.0712 also gives The Department discretion to seek

Page 105

1 Department of Labor positive cause finding was coming, I
2 made a decision not to go onto the Merit Review Board.

3 Also, it should be noted, Steve Karlson
4 tried to get me disqualified from that, as well. Who
5 knows whether that would have worked or not.

6 Q. Moving onto the merits of the denial of your
7 request for advanced hire.

8 A. Where are we?

9 Q. Do you remember reading Rule 5.0711 that
10 provides the appointing authority may provide a higher --
11 starting rates higher than the minimum for the paygrade
12 up to 80 percent at this point where the applicants'
13 qualifications are clearly over and above the initial
14 required minimum by the class specification.

15 MS. BREWINGTON: Before you answer that
16 question, where are you again?

17 MS. CSIZMADIA: 5.0711.

18 MS. BREWINGTON: Thank you. You were
19 just making a statement.

20 BY MS. CSIZMADIA:

21 Q. May approve a starting rate higher than the
22 80th percentile provided that such higher rate is
23 requested in writing by the appointing authority and is
24 clearly justified and contains applicable documentation

Ann L. Breslin

28 (Pages 106 to 109)

Page 106	Page 108
<p>1 of the applicant's qualifications.</p> <p>2 Do you remember reading that?</p> <p>3 A. I do. I think I read that one. Who knows</p> <p>4 what I've read and haven't read so far.</p> <p>5 Q. That's the advanced hire provision.</p> <p>6 Correct?</p> <p>7 MS. BREWINGTON: Asked and answered.</p> <p>8 Objection.</p> <p>9 BY MS. CSIZMADIA:</p> <p>10 Q. What work is it that you believe met the</p> <p>11 criteria of clearly over and above those required by the</p> <p>12 minimum of the class specification?</p> <p>13 A. Meaning my job?</p> <p>14 Q. Yes.</p> <p>15 A. Everything I was doing. I have a list in 2001</p> <p>16 of my 12 projects that I was working on. I was not entry</p> <p>17 level. I was barely entry level when I was entry level.</p> <p>18 I wasn't on the learning curve. I was a person that was</p> <p>19 fully functional in my position. I was on the technical</p> <p>20 assistance group. I was on the consultant review group.</p> <p>21 I was handling projects, both with the EPA and State.</p> <p>22 Voluntary Clean Up Program, Hazardous Substance Clean Up</p> <p>23 Act dealing with project officers and consulting firms.</p> <p>24 Definitely was not entry level.</p>	<p>1 investigation.</p> <p>2 Q. You both had Bachelor degrees.</p> <p>3 Right?</p> <p>4 A. And we both had Master degrees.</p> <p>5 Q. And Master degrees.</p> <p>6 Right?</p> <p>7 A. Yes.</p> <p>8 Q. So, what prior experience in project</p> <p>9 management did you have, in addition to your work at</p> <p>10 DNREC, that would qualify you to exceed the</p> <p>11 qualifications, the minimum?</p> <p>12 A. But I was already working for DNREC when I</p> <p>13 went from my two and then to my three.</p> <p>14 Q. I'm looking for what's different between you</p> <p>15 and Keith.</p> <p>16 You both worked for, at least, six</p> <p>17 months with The Department. You both had Bachelor</p> <p>18 degrees?</p> <p>19 A. Yes. And Master degrees.</p> <p>20 Q. And Master degrees?</p> <p>21 A. Correct.</p> <p>22 Q. And you both had some prior experience.</p> <p>23 Correct?</p> <p>24 A. Yes.</p>
Page 107	Page 109
<p>1 Q. Were you referring to your experience with</p> <p>2 Houghton College and at the Chesapeake Bay Foundation?</p> <p>3 A. I was referring to my experience from the time</p> <p>4 I started until the time I went to ES3.</p> <p>5 Q. I believe you told me earlier that the policy</p> <p>6 was that you needed to work for six months to even</p> <p>7 qualify?</p> <p>8 A. That's correct.</p> <p>9 Q. And it's experience as project management, is</p> <p>10 it not, that is the difference between an ES2 and ES3.</p> <p>11 Is that correct?</p> <p>12 A. My understanding from I think what you had me</p> <p>13 read earlier, in one of the earlier exhibits somewhere.</p> <p>14 Q. So, both you and Keith had worked for SIRB as</p> <p>15 a two for, at least, six months before you applied for an</p> <p>16 ES3 position?</p> <p>17 A. Correct.</p> <p>18 Q. For the promotion.</p> <p>19 Correct?</p> <p>20 A. Yes.</p> <p>21 Q. You both had the same amount of experience</p> <p>22 there?</p> <p>23 A. Yes. We both had the same amount of</p> <p>24 experience. Doing hazardous site clean up. Remediation</p>	<p>1 Q. So, what would differentiate between the two</p> <p>2 of you would be your prior experience.</p> <p>3 Correct?</p> <p>4 A. I don't think there is a differentiation. I</p> <p>5 think the whole point of this is, we are similar, very</p> <p>6 similar. In fact, not even substantially the same job.</p> <p>7 Pretty much the same job.</p> <p>8 Q. If there is a difference, it would be in your</p> <p>9 prior work experience, then.</p> <p>10 Correct?</p> <p>11 A. I don't think there is a difference.</p> <p>12 Q. Could you, please, answer my question?</p> <p>13 A. I have answered it.</p> <p>14 Q. Do you believe your prior work experience was</p> <p>15 absolutely equivalent to Keith's prior work experience?</p> <p>16 A. I believe we had the same type of background</p> <p>17 experience to start off, entry level for those positions</p> <p>18 that we were hired into in DNREC.</p> <p>19 Q. Let's look at your advanced hire request</p> <p>20 again. What exhibit was that? Exhibit 4. No. 7. Have</p> <p>21 we marked that? Yes. Exhibit 7.</p> <p>22 A. Okay.</p> <p>23 Q. And we need the supplement exhibit, which is</p> <p>24 Exhibit 8.</p>

CORBETT & WILCOX

B-0094

Ann L. Breslin

29 (Pages 110 to 113)

Page 110

1 MS. BREWINGTON: Which ones are we going
2 to look at?

3 MS. CSIZMADIA: Seven and eight.

4 MS. BREWINGTON: Not 4.

5 MS. CSIZMADIA: I read that wrong. I
6 apologize.

7 MS. BREWINGTON: Seven and eight. Do
8 you have them?

9 THE WITNESS: I have the ones she is
10 referring to. I actually started writing on them.

11 BY MS. CSIZMADIA:

12 Q. You told me that you and Karl wrote these
13 together.

14 Is that correct?

15 A. Mum-hum. That is correct.

16 Q. Did you have anything to put in them that you
17 did not put in them?

18 A. Well, we were requested to add more
19 information, which was my epic. Part of the epic, you
20 had to exceed expectations that showed you were working
21 at a higher level. And we added the letter from the
22 Chesapeake Bay Foundation, which I worked for a while.

23 Q. Did you know it was really important to making
24 a determination as to what was in the memos?

Page 111

1 A. What?

2 Q. Was it important to human resources' ability
3 to make a determination about your credentials was the
4 information in the memos? Did they base it on anything
5 else?

6 A. I don't know.

7 Q. So, the information in the memos would be
8 pretty important.

9 Correct?

10 A. Generally is, yes.

11 Q. Was there anything in there that you asked
12 Karl to put in there that he did not put in there?

13 A. I don't believe so. But I'm not 100 percent
14 sure, considering it was eons ago.

15 Q. If you look at the first memo, which is
16 Exhibit 7, and I'll number these myself. At the bottom,
17 the last paragraph refers to your work experience at the
18 Chesapeake Bay Foundation?

19 A. Yes.

20 Q. Can you read that, please, out loud?

21 A. Ann Breslin's work experience at Chesapeake
22 Bay Foundation as a wetland scientist is directly
23 applicable to work performed in SIRB -- at SIRB. Ann
24 performed wetlands delineation research projects, which

Page 112

1 includes bill research over the wetlands permitting
2 process in Pennsylvania. Emphasis is directed toward
3 discovering if the net loss of wetlands is comparable to
4 net gain during wetlands mitigation/reconstruction.

5 Q. Can you read the next paragraph, too, please?

6 A. And also worked for 1.66 years as a laboratory
7 assistant. Her duties included teaching skills and
8 laboratory sessions, tutoring, catalogued and preparing
9 herbarium of present and historical flora for college
10 archives and assisting in research project.

11 Q. Do you consider that the level of work that
12 you did at SIRB highly technical work that you did at
13 SIRB?

14 A. Please rephrase. I don't understand the
15 question.

16 Q. Did you consider your work experience at the
17 Chesapeake Bay Foundation and as a laboratory assistant
18 to be comparable to the level of work that you were doing
19 as an Environmental Scientist?

20 A. In SIRB?

21 Q. Yes.

22 A. Were they the same? The principles of project
23 management, data gathering, decision making, writing
24 reports, briefing superiors. Yes.

Page 113

1 Did I have experience with cleaning up
2 hazardous sites at that point in time? No.

3 Q. So, this experience was applicable to the job.
4 Right?

5 This experience would have been
6 applicable to a job in wetlands as an Environmental
7 Scientist 3, also.

8 Correct?

9 A. I don't know. I don't know if there's
10 selectives markets -- selectives, I think they're called.

11 Q. With no selectives, was the minimums you read?

12 A. I would have to see it before I could make any
13 kind of decision.

14 Q. You don't think wetlands work is more
15 applicable to wetlands. I think that's what you're
16 telling me. And I'm clarifying what you're telling me.

17 A. No. I have to be very careful because there's
18 an agenda. And what I'm trying to do is explain, without
19 falling into a hole, of my own making. So, I would have
20 to see a job description for the wetlands project before
21 I could make any kind of decision. Project management is
22 project management.

23 I'm a scientist, highly technical. I
24 did teaching for a lot of years. I did mentoring when I

Ann L. Breslin

30 (Pages 114 to 117)

Page 114

1 was with SIRB.
 2 Q. Tell me where else your advanced hire request,
 3 this November 13th document, points to any prior work
 4 experience?
 5 A. In November?
 6 Q. Mum-hum. Yes.
 7 A. I worked for Houghton College.
 8 Q. We talked about that.
 9 Right?
 10 A. Yes. I worked for Chesapeake Bay Foundation.
 11 I worked for Shippensburg University.
 12 Q. And where is that?
 13 A. It's not here. I was in community relations.
 14 Q. So, it is not applicable?
 15 A. I think it's very applicable. But it is what
 16 it is.
 17 Q. Why didn't you put it in?
 18 A. I'm a time machine. Maybe I can tell you.
 19 Q. Let's go to the supplement advanced hire.
 20 A. Mum-hum.
 21 Q. Exhibit No. 8. This memo attaches a copy of
 22 your performance plan.
 23 Is that correct?
 24 A. Yes. For January '95 to December 1995.

Page 115

1 Q. And I believe you told me the purpose was to
 2 show the level that you were working at that you had
 3 been --
 4 A. That is what Carl told me.
 5 Q. And then -- go ahead.
 6 A. And if you exceed expectations, it would be
 7 enough to show that you were working at that higher level
 8 for at least six months.
 9 Q. And that was the criteria, just to get the
 10 career ladder advancement?
 11 A. At that point in time was my understanding.
 12 Yes.
 13 Q. Now, attached to that is a very nice letter
 14 from the Chesapeake Bay Foundation.
 15 Correct?
 16 A. Yes.
 17 Q. Can you read the bullets for me, please?
 18 Well, actually, you don't want to read the whole letter;
 19 do you?
 20 A. No. Not really.
 21 Q. I would like the letter to be read. So, would
 22 you rather read it, or have me read it?
 23 A. I'll read it. Dear Ann. Thank you for your
 24 request to revisit your internship here at CBF. Even

Page 116

1 though it was several years ago, you still rank on top as
 2 the best intern with which I have worked. Here is a list
 3 as a follow up of some your responsibilities.
 4 Constructing and maintaining database
 5 listing information on all wetlands permits that were
 6 proposed in 1991.
 7 Working with our Maryland wetlands
 8 scientist in developing a database to use all of the
 9 permit reviews done here and in other states.
 10 Composing the data review request sent
 11 to the P.A. Department of Environmental Resources and
 12 scheduling file review times with the DER staff because
 13 the majority of the time, DER will only hold a limited
 14 number of files for each review. And we looked at all of
 15 the wetland encroachment files for the calendar year
 16 1991.
 17 Through the data and files, glean
 18 from the files, the answers to the questions under the
 19 CBF review sheet. Entering data in the database. Filing
 20 process with request for files that were not found the
 21 first time they were requested.
 22 Traveling to the Army Corp of Engineers
 23 Office in Baltimore to review wetlands permits submitted
 24 to the Corp of Engineers.

Page 117

1 Task that were assigned to you required
 2 high attention and maintain a high level of interest and
 3 devotion to the job.
 4 After reviewing your work closely at the
 5 beginning, I was very comfortable in allowing you the
 6 independence to make judgment calls in answering the
 7 questions on the CBF review sheet.
 8 It was the answer to these questions
 9 that became the basis of redoing the wetland permitting
 10 program.
 11 I hope this is what you needed. Please
 12 give me a call if you need more information.
 13 Q. Thank you.
 14 Now, just to clarify, moving back to the
 15 laboratory assistant at Houghton College. You were a
 16 laboratory/teacher assistant during the regular school
 17 year of September '88 through May of '89 and September of
 18 '89 through May of '90.
 19 Is that correct?
 20 A. That's what I wrote. That's correct.
 21 Graduated in '90. So, it is probably actually in my --
 22 Q. I will actually hand you a document. That is
 23 the application for the Environmental Scientist I job.
 24 Is that right?

Ann L. Breslin

31 (Pages 118 to 121)

Page 118

Page 120

1 A. Yes.
 2 (State of Delaware Employment
 3 Application for Environmental Scientist 1 job was marked
 4 as Breslin Exhibit No. 18 for identification.)
 5 BY MS. CSIZMADIA:
 6 Q. I will show you another document.
 7 Was that your application for the
 8 Environmental Scientist 2 job?
 9 A. Yes.
 10 Q. And then the third would be the application
 11 for the Environmental Scientist 3 job.
 12 Right?
 13 A. Yes.
 14 (State of Delaware Employment
 15 Application for Environmental Scientist 2 job was marked
 16 as Breslin Exhibit No. 19 for identification.)
 17 (State of Delaware Employment
 18 Application for Environmental Scientist 3 job was marked
 19 as Breslin Exhibit No. 20 for identification.)
 20 BY MS. CSIZMADIA:
 21 Q. On your resume attached to your ES2
 22 application, which is No. 19, are those the time frames
 23 that you submitted?
 24 A. Yes.

Page 119

1 Q. Are those accurate?
 2 A. Yes.
 3 Q. How is it that you describe your work there in
 4 that resume?
 5 A. Teacher's assistant for all botany labs.
 6 Catalogued. Existing herbarium. Catalogued and prepared
 7 herbarium of historical flora for college archives.
 8 Assisted botany professor during research projects.
 9 Q. Oh, look. That talks about your Shippensburg
 10 community relations too, same resume.
 11 Could you read that, please?
 12 A. Facilitated student-community communications
 13 planned, and coordinated student and community
 14 activities, such as the College Career Day and Annual
 15 Children's Fair. Prepared maps on the AutoCad Version
 16 11 Computer Mapping Programs.
 17 Q. Do you think you put that on your advanced
 18 hire application package?
 19 A. No idea.
 20 Q. In your ES3 application, which is Exhibit No.
 21 20, there is a minimum qualifications section where you
 22 address each of these minimum qualifications separately.
 23 Do you see the section that refers to
 24 program management number three?

1 A. Yes.
 2 MS. BREWINGTON: What page are you on?
 3 Is it like a page or anything?
 4 MS. CSIZMADIA: Second or third page.
 5 Number three.
 6 BY MS. CSIZMADIA:
 7 Q. What do you use to show that you have
 8 experience in environmental/natural resources program or
 9 project management? What work experience?
 10 A. Sampling. Laboratory results. Compiling.
 11 Designing. Peer reports. SO reports. Brownfield
 12 Preliminary Assessment reports. Consultant oversight, as
 13 a project manager during inspections and investigations.
 14 Activities under PCB.
 15 Q. It is your SIRB work.
 16 Correct?
 17 A. Yes.
 18 Q. Is there anything else?
 19 A. No.
 20 MS. CSIZMADIA: Mark this as 21.
 21 (Memorandum dated September 17, 1996 was
 22 marked as Breslin Exhibit No. 21 for identification.)
 23 BY MS. CSIZMADIA:
 24 Q. I will show you another document.

Page 121

1 Have you seen this before?
 2 A. I have a copy of that.
 3 Q. That's Mr. Robertson's advanced hire report;
 4 is it not?
 5 A. Yes.
 6 MS. CSIZMADIA: Mark this as 22.
 7 (Memorandum dated September 13, 1996 was
 8 marked as Breslin Exhibit No. 22 for identification.)
 9 BY MS. CSIZMADIA:
 10 Q. Here is another document, Exhibit 22.
 11 You said that was Keith's supplemental
 12 response to his advanced hire request?
 13 A. Yes. Kind of interesting his was initially
 14 denied, too.
 15 Q. Yes, it is.
 16 Mr. Robertson cites his experience with
 17 SIRB in his advanced hire request.
 18 Right?
 19 A. No.
 20 Q. What about under justification on the first
 21 page?
 22 A. Bottom of the first page he refers to work
 23 level as ES3 responsibility.
 24 Q. Under justification, does it say Keith

Ann L. Breslin

32 (Pages 122 to 125)

Page 122

1 Robertson worked under Site Investigation and Restoration
 2 Branch, SIRB, since February 1, 1994?
 3 A. Yes.
 4 Q. In addition to his 2.5 years of Environmental
 5 Scientist experience within SIRB Keith Robertson has 4.75
 6 years of related experience.
 7 Is that right?
 8 A. Yes.
 9 Q. That's really the only mention of his SIRB
 10 work in this document.
 11 Correct?
 12 A. Yes.
 13 Q. There's a whole other page-and-a-half
 14 discussing his other work.
 15 Right?
 16 A. Yes. Coastal Archaeology.
 17 Q. Now, looking at his supplemental request, it
 18 is another page-and-a-half, please?
 19 A. Archaeology. Yes. Some Coastal Zone
 20 Management Act Evaluations.
 21 Q. Now, we have already clarified you both had
 22 comparable degrees?
 23 A. We do.
 24 Q. And as you pointed out, the human resources

Page 123

1 office asked for follow-up information from both of these
 2 request.
 3 Right?
 4 A. Yes.
 5 Q. And the response that you and Mr. Kalbacher
 6 drafted for the additional information, it forwards a
 7 copy of your performance evaluation.
 8 Correct?
 9 A. That's correct.
 10 Q. And a nice letter from you from the Chesapeake
 11 Bay Foundation.
 12 Correct?
 13 A. Yes.
 14 Q. And the letter from the Chesapeake Bay
 15 Foundation says that you ranked as the best intern
 16 Ms. Cuso ever worked with.
 17 Correct?
 18 A. That's correct.
 19 Q. It says that the bulk of your time was spent
 20 composing data review request to send to the Pennsylvania
 21 Department of Environmental Resources and scheduling file
 22 review times with DER staff.
 23 Right?
 24 A. It was project management, as well. Wetlands

Page 124

1 investigations. Permitting. That's correct.
 2 Q. Is that what the letter says, what I read?
 3 A. What the letter says, and you have also to
 4 look at my advanced hire justification says to explain it
 5 a little bit better. I asked Barb to just detail what
 6 specific fit of work it was.
 7 Q. I'm just asking you, does the letter from Barb
 8 say most of your time was spent doing that?
 9 A. But it is not inclusive to my job description
 10 there. No. But it is exactly what the letter says.
 11 Q. And what she said you spent the bulk of your
 12 job doing is not project management experience; is it?
 13 A. I believe it is. Yes. Project management.
 14 Q. In response to a follow-up request concerning
 15 Keith Robertson, they provided another memo also.
 16 Right?
 17 A. That's correct.
 18 Q. I'm going to read some of it to you. I would
 19 like to ask you if it's a fair characterization of some
 20 of the information in it. Okay. I'm looking at the
 21 supplement. I'm starting my summary on the third
 22 paragraph.
 23 MS. BREWINGTON: On the first page?
 24 MS. CSIZMADIA: Yes.

Page 125

1 BY MS. CSIZMADIA:
 2 Q. While working as a geoarchaeologist for the
 3 Rhode Island Center for Public Archaeology, he was the
 4 only geologist at the center.
 5 Is that correct? Is that what it says?
 6 MS. BREWINGTON: Can she read it first?
 7 BY MS. CSIZMADIA:
 8 Q. Let me give you a minute to read it?
 9 A. Okay. (Pause.)
 10 Q. Did you have a chance to read it now?
 11 A. Yes. Sure.
 12 Q. The letter says that he was working as the
 13 only geologist at the center, while working as a
 14 geoarchaeologist for the Rhode Island Center for Public
 15 Archaeology?
 16 A. Yes.
 17 Q. It says that his expertise and
 18 responsibilities embodied more of a consulting nature,
 19 assisting in the development of experimental design and
 20 establishment of project goals, as well as ensuring
 21 implementation and measuring progress of the
 22 investigation from a geologic perspective through
 23 oversight of site excavation and artifact collection,
 24 while simultaneously developing statistical analyses on

Ann L. Breslin

33. (Pages 126 to 129)

Page 126

1 the data collected, areal and temporal artifact
2 distribution.

3 Do you see that in the memo?

4 A. Yes, I do.

5 Q. It talks about his personal technical
6 responsibilities, including soil classification and
7 profiling, topographic mapping, et cetera?

8 A. Yes.

9 Q. I'm going to read a little bit more and ask
10 you if you see it and we'll get to the end.

11 Keith ultimately compiled all of this
12 information into a comprehensive palaeoenvironmental
13 reconstruction. And that information resulted in the
14 re-routing of a proposed highway, which otherwise would
15 have destroyed a valuable piece of New England Native
16 American history.

17 Do you see that?

18 A. Yes.

19 Q. Describes his duties at the University of
20 North Carolina as a project manager for a 14-month field
21 study of shoreline dynamics along Topsail Island, North
22 Carolina. And says he was fully responsible for design,
23 development, implementation and conclusion of the
24 project.

Page 127

1 Do you see that?

2 A. Yes.

3 Q. Following the project's completion, Keith's
4 research was utilized by the North Carolina Division of
5 Coastal Management in planning future development of the
6 Onslow Bay section of the North Carolina coastline.

7 The information and design approach have
8 been incorporated into course material for a summer
9 graduate course and two publications were generated from
10 the report.

11 Do you see that?

12 A. I do. Good for Keith.

13 Q. Is that environmental scientist type work?

14 A. Project management.

15 Q. Project management is one of the requirements
16 for Environmental Scientist.

17 Right?

18 A. Mum-hum.

19 Q. So, the additional work experience that we
20 talked about with Keith Robertson, besides his SIRB work
21 and beside his degrees that we have just discussed, and
22 the additional work experience on your advanced hire
23 package that we talked about beside SIRB, besides your
24 advanced degree when you were working as a laboratory or

Page 128

1 teaching assistant when you were spending the bulk of
2 your time composing data review request and schedule file
3 reviews.

4 Correct?

5 A. Mum-hum.

6 Q. Do you still think the reason you were turned
7 down is because you were discriminated against?

8 A. We're missing the whole point here. Keith and
9 I were doing the same job.

10 Why in the world would you not pay me
11 the same, or they would not pay me the same amount for
12 the same job? That is the essence. Merit Reviews.

13 Whatever. That is the question. We were doing the same
14 work. We were on the Technical Assistance Group. We
15 were on the Consultant Review Group. Dealing with EPA.
16 We were dealing with project management. We carried a
17 very heavy load.

18 Keith and I together carried the same
19 heavy load, and we carried a load heavier than most of
20 the other people that we worked with together, doing the
21 same job. Doing the same job. I was not entry-level,
22 and I should not have been entry level.

23 Regardless of a lot of fancy words, and
24 it's a lot of fancy words, what Keith was doing was

Page 129

1 pretty basic. Good for Keith. That's Keith's thing.

2 Keith's thing is a geology when he was in graduate
3 school. My was botany and biology.

4 The essential question is this. I was
5 not entry-level. Why were we being paid so differently?
6 Why was I being paid entry-level? Why?

7 And I know, and Marilyn can say this
8 did not happen, but I leaned across the table and said to
9 you and Steve, tell me that I do not deserve to be paid
10 the same amount as Keith. Tell that to my face. Look me
11 in the eye.

12 And Steve said, Well, that's not what we
13 are saying here. We don't have any mechanism. It is
14 just ridiculous. It's absolutely, completely ridiculous.
15 We were doing the same job. I was not entry-level. Six
16 years as an Environmental Scientist 3, and I was being
17 paid 23 cents a year. I had a Master's degree. I was
18 doing a highly technical specialized job. It is
19 ridiculous. And I was the only one.

20 So, all this covers up is the essential
21 issue. The essential issue was, it wasn't that we were
22 doing substantially the same job or similar jobs, we were
23 doing the same job.

24 Q. And you don't think that the difference in

Ann L. Breslin

34 (Pages 130 to 133)

Page 130

1 your experience when you got there made a difference?

2 A. When I got there. When I got there. That is
3 not the issue here.

4 The issue is, what happened when you are
5 down the road. What happened to you a year down the
6 road. What happened three years down the road.

7 I saw in your answer to my complaint the
8 word hazardous site was taken out of the first sentence.
9 Pretty clever. But, basically, neither of us had any
10 experience with hazardous sites, clean up, remediation,
11 investigation when we started there. None of us had
12 hazardous experience. It was on-the-job training.

13 Do I think he should have been paid more
14 than me because he worked on coastal archaeology projects
15 when we were both working in SIRB, absolutely not.
16 Absolutely not. I was there nine years. He was there
17 maybe 10, altogether. Just ridiculous. It is so
18 ridiculous. Doesn't even passed the lab test.

19 Q. You don't really care what the Merit Rules
20 say; do you?

21 MS. BREWINGTON: Objection.

22 MS. CSIZMADIA: Actually, it is a
23 question.

24 THE WITNESS: I think there is something

Page 131

1 that is truth and honesty and what is fair. And I think
2 that is the absolute issue here.

3 BY MS. CSIZMADIA:

4 Q. Do you think The Department followed the Merit
5 Rules?

6 A. I have not read the Merit Rules from soup to
7 nuts. If I read the Merit Rules from soup to nuts, I may
8 be able to make sort of an educated decision on that.

9 I think very well they could have taken
10 the Merit Rules that you gave to me and showed me and
11 easily remedied the problem. The decision was made not
12 to.

13 Q. And you are telling me the reason it was not
14 was because you're a woman?

15 A. I believe that was the reason.

16 Q. And Karl Kalbacher was the one that made the
17 decision to pay you that way and to not --

18 A. I believe he initially --

19 MS. BREWINGTON: Hold on. I need you to
20 finish the question.

21 MS. CSIZMADIA: Okay.

22 BY MS. CSIZMADIA:

23 Q. Karl Kalbacher was the reason that you were
24 paid that way?

Page 132

1 MS. BREWINGTON: I will object on the
2 grounds it's a compound question. You can answer to the
3 extent you know how.

4 THE WITNESS: I said initially when the
5 decision was made, when I came on, back in '96/'97, that
6 position, to not fight for me to go further, I believe
7 that was one issue with Karl was discrimination.

8 I also agree and also think that later
9 on when it was very clear that I was the only person
10 being paid entry-level by far, and the only woman there,
11 I do believe that I was discriminated against.

12 BY MS. CSIZMADIA:

13 Q. By whom?

14 A. By DNREC.

15 Q. Which person?

16 A. By DNREC itself.

17 Q. You can't point to a specific person?

18 A. I'm saying by DNREC.

19 Q. I'm asking you if you can point to a specific
20 person?

21 MS. BREWINGTON: Objection. Asked and
22 answered.

23 MS. CSIZMADIA: I don't think she
24 answered it.

Page 133

1 THE WITNESS: I answered it.

2 MS. BREWINGTON: Answer to the extent
3 you know.

4 THE WITNESS: I think DNREC. That was
5 the policy of it. Don't rock the boat.

6 BY MS. CSIZMADIA:

7 Q. There is one thing I wanted to clarify.

8 You told me you chose not to file a
9 grievance at that point.

10 Should Mr. Karl Kalbacher have done
11 something when you chose not to pursue it?

12 MS. BREWINGTON: I'm going to object.
13 At what point, just for clarification.

14 MS. CSIZMADIA: At the denial of your
15 advanced hire request. You choice not to grieve it.

16 MS. BREWINGTON: Thank you.

17 BY MS. CSIZMADIA:

18 Q. Were you expecting Mr. Kalbacher -- should

19 Karl Kalbacher have done something when you chose not to
20 pursue your remedy?

21 A. I have no idea.

22 Q. You think it is discrimination that he did
23 not?

24 A. I believe he did not fight for me like he

Ann L. Breslin

35 (Pages 134 to 137)

Page 134

Page 136

1 should have.

2 Q. What did you have, at that point, I'm not
3 talking about later, but at that point what did you have
4 that you could have fought with?

5 A. That was quite an insult. It was pretty good.
6 Right to the ribs.

7 Q. I did not mean it as an insult.

8 A. It really was. You are saying my experience
9 is like shit, and it's not.

10 Q. No. I'm not saying that.

11 A. But the fact of the matter is this, Jamie,
12 again, even had to talk to personnel, even when the
13 supplemental went down, she again had to sit there and
14 argue with him on the phone. She argued for a long time
15 until finally it was okay. I have this one piece of
16 paper that I have, I've gotten from her and from Sharon,
17 which has all kind of scribble going around whether or
18 not we could do it. Whether or not it was applicable or
19 whether the money was there. Whatever. She fought. She
20 fought long and hard. Good for me.

21 Q. You're saying Jamie fought for Keith?

22 A. Long and hard. Karl did not fight for me.

23 Q. How many months was your internship at
24 Chesapeake Bay Foundation?

Page 135

1 A. I believe it was seven months. That's what it
2 says. You have to understand, this was 16-years-ago, at
3 least.

4 Q. Your first application, your ES1 application,
5 which is No. 18, your transcript attached to it has two
6 internships in the summer semester.

7 Is that the internship at the Chesapeake
8 Bay Foundation?

9 A. Where are you?

10 Q. On the transcript attached to ES1 application.
11 Last page.

12 A. I can't find it right now.

13 Q. I'll show you mine.

14 A. Yes. I would have to look it up. I did
15 internship with the GIS people. I also did it with
16 community relations. Graduate internships. I worked for
17 a couple of the geologist there.

18 So, honestly, I would have to
19 cross-reference it to my course work.

20 Q. Prior to you leaving DNREC, was there a point
21 when Karl used to be your supervisor?

22 A. Yes.

23 Q. Who became your supervisor after that?

24 A. Paul Will. There were some interim managers

1 there.

2 Q. Before Mr. Karl Kalbacher left, did he ever
3 have occasion to speak to you or voice to you any
4 concerns about your performance in writing?

5 A. I believe I had a run-in with our secretary
6 over some issue. I have that somewhere here, which I
7 wrote a full explanation for.

8 Q. Would he have kept copies of that document?

9 A. Pardon?

10 Q. Would he have kept a copy of those documents?

11 A. Who, Karl?

12 Q. Yes.

13 A. I have no idea.

14 Q. Did he maintain a personal file in his office
15 related to you?

16 A. That, I don't know. I don't dig around Karl's
17 personal stuff. Here is the letter.

18 Q. Excuse me. Can you finish that? You don't
19 dig around in Karl's personal what?

20 A. His files or drawers. I never had occasion to
21 dig around his drawers, unless he said, go in my drawer
22 and get something out.

23 Q. So, you did not go into his office and take
24 that file when he left?

Page 137

1 A. I don't think so.

2 MS. BREWINGTON: Do you know what file?

3 MS. CSIZMADIA: The file with those
4 write-ups in it.

5 MS. CSIZMADIA: May I see them, so I can
6 clarify.

7 THE WITNESS: Yes.

8 BY MS. CSIZMADIA:

9 Q. That's not what I'm referring to.

10 A. In fact, when I left, right before I left, I
11 went down to personnel and requested a full copy of my
12 file and most of it was missing.

13 Q. So, you don't know anything about Karl having
14 a file in his office that may have contained some
15 write-up about you?

16 A. Not to my knowledge. But I'm sure most
17 managers keep files on the people that they have.

18 Q. And you don't think it would be appropriate
19 for you to go in his office and take out the file?

20 MS. BREWINGTON: I'm going to object on
21 the grounds of relevance.

22 THE WITNESS: I have no idea what this
23 has to do with anything.

24 BY MS. CSIZMADIA:

CORBETT & WILCOX

B-0101

Ann L. Breslin

36 (Pages 138 to 141)

Page 138	Page 140
1 Q. Did you tell somebody that you went into	1 INDEX
2 Karl's office and took out a file on you after he left?	2
3 A. Not to my memory.	3 DEPOSITION OF: ANN L. BRESLIN
4 Q. Did you go into his office and take out a	4
5 file?	5 EXAMINATION PAGE
6 A. No.	6
7 Q. If somebody said that you told them that you	7 Examination by Ms. Csizmadia 3
8 did --	8
9 MS. BREWINGTON: I will object on the	9
10 grounds of speculation.	10
11 THE WITNESS: No idea.	11 EXHIBITS
12 BY MS. CSIZMADIA:	12
13 Q. So, you're saying, you did not go into his	13 1. One-page document dated August 23, 20
14 office and take out a file?	14 2004 was marked as Breslin Exhibit
15 MS. BREWINGTON: I'll object. Asked and	15 No. 1.
16 answered. Relevance.	16 2. Document entitled Class Title: 38
17 MS. CSIZMADIA: Relevance is to	17 Environmental Scientist 1 was marked
18 credibility. A lot of this deals with credibility.	18 as Breslin Exhibit No. 2.
19 BY MS. CSIZMADIA:	19 3. Document entitled Class Title: 39
20 Q. Do you know what I'm talking about?	20 Environmental Scientist 2 was marked
21 A. No. I have no idea what you're talking about.	21 as Breslin Exhibit No. 3.
22 I would like to see what you're talking about.	22 4. Document entitled Class Title: 39
23 Q. What I am talking about is whether you went	23 Environmental Scientist 3 was marked
24 into Karl's office and took a file out concerning you?	24 as Breslin Exhibit No. 4.
Page 139	Page 141
1 A. I have no memory of doing that. Of course,	1 INDEX CONTINUED:
2 Karl left 10-years-ago. Eight-years-ago.	2
3 Q. That would not be significant enough to	3 5. Document entitled Class Title: 39
4 remember?	4 Environment Scientist 4 was marked
5 A. No.	5 as Breslin Exhibit No. 5.
6 MS. CSIZMADIA: I have no further	6 6. Document entitled Table of Current 47
7 questions.	7 Pages was marked as Breslin Exhibit
8 MS. BREWINGTON: We would like to read	8 No. 6.
9 and sign.	9 7. Document dated November 13, 1996 was 54
10 (The deposition was concluded at,	10 marked as Breslin Exhibit No. 7.
11 approximately, 2:30 p.m.)	11 8. Document dated December 10, 1996 55
12 I HAVE READ THE FOREGOING DEPOSITION,	12 was marked as Breslin Exhibit No. 8.
13 AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.	13 9. Document dated May 17, 2001 was 73
14	14 marked as Breslin Exhibit No. 9.
15 ANN L. BRESLIN	15 10. Document dated December 10, 2001 75
16	16 was marked as Breslin Exhibit
17	17 No. 10.
18	18 11. Document entitled Memorandum 78
19	19 dated May 17, 2001 was marked
20	20 as Breslin Exhibit No. 11.
21	21 12. Document dated August 16, 2002 83
22	22 was marked as Breslin Exhibit
23	23 No. 12.
24	24

Ann L. Breslin

37 (Pages 142 to 144)

	Page 142	Page 144
1 INDEX CONTINUED:		1 CERTIFICATE
2		2 STATE OF DELAWARE:
3 13. E-mail dated September 11, 2002 85		3 NEW CASTLE COUNTY:
4 was marked as Breslin Exhibit		4 I, Gloria M. D'Amore, a Registered
5 No. 13.		5 Professional Reporter, within and for the County and
6 14. Document dated September 11, 2002 85		6 State aforesaid, do hereby certify that the foregoing
7 was marked as Breslin Exhibit		7 deposition of ANN L. BRESLIN, was taken before me,
8 No. 14.		8 pursuant to notice, at the time and place indicated; that
9 15. Document dated October 29, 2002 100		9 said deponent was by me duly sworn to tell the truth, the
10 was marked as Breslin Exhibit		10 whole truth, and nothing but the truth; that the
11 No. 15.		11 testimony of said deponent was correctly recorded in
12 16. Document dated November 22, 2002 101		12 machine shorthand by me and thereafter transcribed under
13 was marked as Breslin Exhibit		13 my supervision with computer-aided transcription; that
14 No. 16.		14 the deposition is a true record of the testimony given by
15 17. Document entitled Step Three 103		15 the witness; and that I am neither of counsel nor kin to
16 Grievance Decision was marked		16 any party in said action, nor interested in the outcome
17 as Breslin Exhibit No. 17.		17 thereof.
18 18. State of Delaware Employment 118		18 WITNESS my hand and official seal this
19 Application for Environmental		19 26st day of April A.D. 2006.
20 Scientist 1 job was marked as		20
21 Breslin Exhibit No. 18.		21
22		22 GLORIA M. D'AMORE
23		23 REGISTERED PROFESSIONAL REPORTER
24		24 CERTIFICATION NO. 119-PS
	Page 143	
1 INDEX CONTINUED:		
2		
3 19. State of Delaware Employment 118		
4 Application for Environmental		
5 Scientist 2 job was marked		
6 as Breslin Exhibit No. 19.		
7 20. State of Delaware Employment 118		
8 Application for Environmental		
9 Scientist 3 job was marked as		
10 Breslin Exhibit No. 20.		
11 21. Memorandum dated September 17, 120		
12 1996 was marked as Breslin		
13 Exhibit No. 21.		
14 22. Memorandum dated September 13, 121		
15 1996 was marked as Breslin		
16 Exhibit No. 22.		
17		
18		
19		
20		
21		
22		
23		
24		

Breslin
Keith J. Robertson

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 26, 2006

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANN L. BRESLIN,)
)
Plaintiff,)
)
v.) C.A. No. 05-290
)
STATE OF DELAWARE,)
DEPARTMENT OF NATURAL)
RESOURCES & ENVIRONMENTAL)
CONTROL,)
)
Defendant.)

Telephonic deposition of KEITH J. ROBERTSON
taken pursuant to notice at the law offices of Margolis
Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware,
beginning at 1:05 p.m., on Monday, June 26, 2006, before
Kimberly A. Hurley, Registered Merit Reporter and Notary
Public.

APPEARANCES:

LORI BREWINGTON, ESQUIRE
MARGOLIS EDELSTEIN
1509 Gilpin Avenue
Wilmington, Delaware 19806
for the Plaintiff

VALERIE S. CSIZMADIA, DEPUTY ATTORNEY GENERAL
(via telephone)
DEPARTMENT OF JUSTICE
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801
for the Defendant

ALSO PRESENT:

ANN L. BRESLIN

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
www.wilfet.com

Breslin

Keith J. Robertson

v.

State of Delaware, Department of Natural Resources & Environmental Control

C.A. # 05-290

June 26, 2006

Page 2

1 KEITH J. ROBERTSON,
2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:
5 BY MS. BREWINGTON:
6 Q. Good afternoon, Mr. Robertson. I'll be taking
7 your deposition today in connection with Ann Breslin's
8 gender discrimination action against DNREC.
9 Have you ever testified in a deposition
10 before?
11 **A. No.**
12 Q. I'm going to ask you a few questions. I'll
13 make every effort to ask them one at a time and you will
14 go ahead and give me your response to the question. If
15 for some reason you don't understand the question, just
16 let me know and I'll go ahead and try and rephrase it or
17 ask it in a different way. But if you do answer the
18 question, we will both assume you understood it.
19 **A. Okay.**
20 Q. I have a court reporter here, and I know we're
21 taking your deposition by phone today. The court
22 reporter is in the room with me and she will be recording
23 your statements. Please make sure that you speak loud
24 enough for her to hear you and that your answers are

Page 3

1 either yes or no and not the uh-huhs or uh-uhs because
2 they don't show up too clear on the record.
3 Do you understand?
4 **A. I'm not quite sure how to spell them. Yes.**
5 Q. Exactly. At some point I may need to stop you.
6 I'm going to look at the court reporter's face and if
7 she's frowning when she's not getting it, I'm going to
8 slow down things.
9 Please state your full name.
10 **A. Keith John Robertson.**
11 Q. What is your current address?
12 **A. P.O. Box 6542, 11-B Street, Bridgeton,**
13 **North Carolina, 28519.**
14 Q. Are you originally from North Carolina?
15 **A. No.**
16 Q. Where do you currently work?
17 **A. State of North Carolina, Division of Water**
18 **Resources.**
19 Q. What is your job title there?
20 **A. Hydrogeologist.**
21 Q. What do you do as a hydrogeologist?
22 **A. I am responsible for approximately 20 percent**
23 **of the North Carolina monitoring well network which**
24 **consists of approximately 175 monitoring well sites**

Page 4

1 across the state that keep track of water levels within
2 the various aquifers, as well as chloride data to measure
3 chloride information to measure saltwater intrusion.
4 Q. How long have you worked there?
5 **A. Almost two years. It will be two years on**
6 **July 28.**
7 Q. That's coming up.
8 I'd like to talk with you about your
9 employment history. Where did you work prior to working
10 for the State of North Carolina?
11 **A. Tell me what, we will start with after I**
12 **graduated graduate school.**
13 Q. Okay. And then we will do your education.
14 Let's start with your work and then we will go back to
15 education.
16 **A. I got out of graduate school and worked for**
17 **five or six months as a geoarchaeologist with the**
18 **University of Rhode Island. That was in the fall and**
19 **winter of 1993-1994.**
20 **February 1994 I was hired by the State of**
21 **Delaware Superfund program as it was then known. I**
22 **worked with them for a little over five years until, I**
23 **think it was, September of '99 that I left.**
24 **And between then and November 2000 I worked**

Page 5

1 for Environmental Strategies Corporation, which was an
2 environmental consulting firm, as a geologist based out
3 of Reston, Virginia.
4 **I didn't particularly care for that line of**
5 **work or the company and I was asked to return and I took**
6 **advantage of that. So I returned to DNREC in November of**
7 **2000 and stayed there until July of -- two years ago.**
8 Q. Who asked you to return? Did they contact you?
9 Did someone from DNREC contact you?
10 **A. Positions were open and I had toyed around with**
11 **the idea of returning, and Alex Rittberg, my -- who would**
12 **then become my supervisor who previous was actually just**
13 **a coworker, he worked in Dover while I worked in**
14 **New Castle, gave me a ring and asked if I would be**
15 **interested in returning. And, well, as it turns out yes,**
16 **I would be interested in returning. So I filed all of**
17 **the application paperwork and underwent the interview and**
18 **all that and then did return.**
19 Q. When you began working at DNREC originally in
20 1994, were you hired as an Environmental Scientist II?
21 **A. Yes.**
22 Q. And then sometime after that you were promoted?
23 **A. Yes.**
24 Q. And you were promoted to Environmental

2 (Pages 2 to 5)

Breslin
Keith J. Robertson

v. State of Delaware, Department of Natural Resources & Environmental Control
C.A. # 05-290 June 26, 2006

Page 6

1 Scientist III?
2 **A. Correct.**
3 Q. In what year were you promoted? Was that the
4 same year, 1994?
5 **A. No. I believe it was 1995 that I was promoted.**
6 Q. Was this a career ladder promotion?
7 **A. Yes.**
8 Q. Do you know what a career ladder promotion is?
9 **A. Are you asking me?**
10 Q. Yes. Do you know what it is?
11 **A. Within your position, as I understand it.**
12 Q. So what do you mean by it's within your
13 position?
14 **A. Essentially the position that you have applied**
15 **for that you hold has an amount of growth associated with**
16 **it up to a certain level, and in this case the position**
17 **was assigned at a level IV, but I was brought in as a**
18 **Scientist II. Therefore, there was some growth within**
19 **that same position to go to a III and then to a IV**
20 **without having to go through any program and do any**
21 **applications or anything along those lines.**
22 Q. Did you receive an increase in your salary as a
23 result of the career ladder promotion?
24 **A. Yes.**

Page 7

1 Q. Do you know how much of an increase you
2 received?
3 **A. I started out at DNREC February '94, \$22,998.**
4 **In that year and a half prior to my promotion I did get**
5 **some increases. Honestly I don't remember the exact**
6 **numbers, but they didn't put me much beyond 25,**
7 **26 thousand. I'll be honest.**
8 **When I got the promotion to Environmental**
9 **Scientist III, my boss and I put together an advanced**
10 **hire package and I ended up, I believe, don't quote me on**
11 **the exact numbers, but it was something like 34, 37,**
12 **somewhere in that range.**
13 Q. Okay. Who was your manager at that time?
14 **A. Jamie Rutherford.**
15 Q. So both you and Jamie Rutherford put together
16 your advanced hire package?
17 **A. Correct.**
18 Q. When you say you both put it together, what
19 part did you do versus what part she did?
20 **A. She really gave me the guidance. I put the**
21 **package together. I wrote goals, all the things that**
22 **sort of -- supporting documents I needed to put together,**
23 **why I believed I was worthy of the position, examples of**
24 **my work, my educational and work history. And Jamie**

Page 8

1 **reviewed it, gave me some guidance and some**
2 **recommendations on what to do. Of course, she did**
3 **include some language recommending me for the advanced**
4 **hire.**
5 Q. We talked a moment ago about your education. I
6 kind of want to go back to that. Tell me about your
7 education since, I guess, high school.
8 **A. I graduated high school, went to Long Island**
9 **University, South Hampton College, which is out on the**
10 **east end of Long Island, and got a Bachelor's degree in**
11 **geology in four years. Graduated August of 1998.**
12 **Worked for actually a year after that as a**
13 **geoarchaeologist with the University of Delaware and then**
14 **entered University of North Carolina Chapel Hill's**
15 **geology program and I got my Master's of geology -- I**
16 **actually received the degree in the winter of '94, but**
17 **for the last two years or so, year and a half after that,**
18 **all that I was doing is writing my thesis. So I enrolled**
19 **in the campus, living on campus, doing research from '89**
20 **to November of '92.**
21 Q. I know that you worked as an Environmental
22 Scientist III at DNREC. Could you tell me, if you can
23 remember, what some of your job duties were?
24 **A. Yes. Really there were two major categories of**

Page 9

1 **duties. First was the regulatory end of it. I was a**
2 **project manager, and my job was to assess, reinforce the**
3 **state Superfund laws regarding the investigation and**
4 **cleanup of hazardous waste disposal, hazardous substance**
5 **disposal sites in the state. And that's really the**
6 **oversight aspect of the job where consultants,**
7 **responsible parties would be performing the work and I**
8 **would be overseeing the technical aspects of their work**
9 **and making sure that they adhered to all the regulations**
10 **that were appropriate.**
11 **The second half of my job was the more**
12 **hands-on. There were a limited number of investigations**
13 **that our branch did ourselves. We went out with the drill**
14 **rig and the shovels and collected the samples and**
15 **essentially performed the investigations ourselves. And**
16 **that was the second half of my job.**
17 **I should say maybe as part of both, because**
18 **of my background in geology and groundwater, I also**
19 **provided technical assistance, hydrogeology assistance to**
20 **those members of the staff that were not hydrogeologists;**
21 **for instance, those that were biologists, chemists, what**
22 **have you. And in like turn I'm not a biologist or a**
23 **chemist, so when I needed their experience, they would**
24 **provide that to me in exchange.**

3 (Pages 6 to 9)

Breslin

Keith J. Robertson

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control

June 26, 2006

Page 10

1 Q. Ann Breslin also served as an Environmental
2 Scientist III; is that correct?
3 **A. Correct. II, then III.**
4 Q. Similar to you?
5 **A. Yes.**
6 Q. Do you know whether you were hired after
7 Ann Breslin?
8 **A. If I remember correctly, we were hired at the**
9 **same time, although Ann may have -- and, of course, she**
10 **knows this better than I do. If I remember correctly,**
11 **Ann served some time as a seasonal or a temp. for a**
12 **couple weeks beforehand. I could be wrong on that, but**
13 **that's what I vaguely recall. But we were actually given**
14 **sort of the same hire month, hire date.**
15 Q. Would you consider or would you have considered
16 both yourself and Ann two of the most senior
17 Environmental Scientist IIIs in DNREC?
18 **A. When? When are you asking this? When we were**
19 **hired?**
20 Q. No, not when you were hired. '01. Around
21 2001.
22 **A. Let's see. 2001. In DNREC I'm not sure. In**
23 **truth --**
24 Q. In what?

Page 11

1 **A. In truth, our New Castle office did not have**
2 **all that much interaction with some of the others. For**
3 **instance, the water programs, the various water programs**
4 **and long-life programs down in Dover. So I really cannot**
5 **speak -- I really don't know much about the personnel and**
6 **what they did even in some cases.**
7 **But the program that we did work with --**
8 Q. Which is SIRB, right?
9 **A. We were in SIRB, Investigation and Restoration**
10 **Branch. The tanks program, hazardous waste program, the**
11 **water supply section, we were getting there in seniority.**
12 **Were we the most senior? No much, but we were certainly**
13 **in the top quarter.**
14 Q. And that's both you and Ann Breslin?
15 **A. Correct, because we were both there the same**
16 **amount of time.**
17 Q. Would you agree that Ann Breslin's job
18 description was similar to yours?
19 **A. Yes, with the following caveat: The state**
20 **Superfund -- or rather the state Superfund branch which**
21 **became the SIRB branch really was divided into three**
22 **programmatic sections. One handled the federal Superfund**
23 **sites. Those would be the military bases and such. He**
24 **second were the state Superfund and voluntary cleanup**

Page 12

1 **programs. Those were state-assigned cleanups. And then**
2 **there was the preredial program which was delegated**
3 **from the EPA in which the site -- the state, rather,**
4 **received funds to pursue the investigation of possible**
5 **sites. They would look into the history of an area and**
6 **assess whether they were -- this was the potential for**
7 **some of the sites -- some Superfund sites in that area.**
8 **Ann worked for that program, as well as had**
9 **the voluntary cleanup program came along, did some of**
10 **that work. I did not work in the preredial program at**
11 **all. Although periodically I may have gone out and**
12 **helped them in the field, I did not work in that program.**
13 **I worked in the state and federal program. There was a**
14 **difference in that regard in what we did. The**
15 **techniques, the knowledge base really were very much the**
16 **same except for maybe the regulatory difference, but**
17 **there we are.**
18 MS. CSIZMADIA: Can I ask a question right
19 here?
20 MS. BREWINGTON: Are you asking him a
21 question or me?
22 MS. CSIZMADIA: I'm asking you, or do you
23 want me to save them for the end?
24 MS. BREWINGTON: Is it something you need

Page 13

1 to interrupt the questioning for? Is it an objection?
2 MS. CSIZMADIA: No. Go ahead. I'm sorry.
3 BY MS. BREWINGTON:
4 Q. Did you and Ann both serve on the hole basin
5 management team?
6 **A. Yes.**
7 Q. What is that?
8 **A. At some point -- I don't remember when it was**
9 **initiated -- the powers that be decided that it would be**
10 **best to start looking -- be beneficial to start looking**
11 **into the state's environment, particularly its water**
12 **resources, in a more holistic fashion. DNREC had a dozen**
13 **or more programs and branches and they didn't always**
14 **communicate well with each other. You have your little**
15 **territory that you work well within, but how many times**
16 **do you honestly communicate with Water Resources or with**
17 **Parks or with Wildlife? This is a way by which the**
18 **various programs could learn about what each other does**
19 **and then see if there was information that they could**
20 **share and would be useful for one another.**
21 **And the way they initiated this program was**
22 **based on the state's primary water basin. You could**
23 **divide the state of Delaware into five primary drainage**
24 **basins. And so they did that and they assigned a basin**

4 (Pages 10 to 13)

Breslin
Keith J. Robertson

v. State of Delaware, Department of Natural Resources & Environmental Control
C.A. # 05-290 June 26, 2006

Page 14

1 investigation team composed of members from all of the
2 branches of DNREC, as well as outside individuals,
3 University of Delaware, etcetera, to investigate these
4 various five basins.
5 Ann belonged to at least one or more. I
6 don't know how many. And I belonged to two, three.
7 Q. Are you finished?
8 A. Yes.
9 Q. I wasn't sure if you were finished that answer.
10 Did both you and Ann serve on the technical
11 assistance team?
12 A. Yes.
13 Q. What is the technical assistance team?
14 A. When I had mentioned previously about providing
15 technical support to other project managers who did not
16 happen to have -- who were hydrogeologists or in my case
17 asking assistance from other people who were biologists
18 and chemists, which I was not, that was the technical
19 assistance.
20 At one point in time it was very formal.
21 You belonged to the tag group and this was a biologist,
22 chemist, and hydrogeologist, and everyone went to these
23 people, and these three people, that's what they did.
24 They acted -- and everyone used them as a resource. That

Page 15

1 was more in the beginning when it was -- the program with
2 the DNREC Superfund program under Ann B. Ramon.
3 As time went on, new management came in,
4 got a lot more sites, a lot of that -- and some of these
5 tag members left, but the responsibilities of technical
6 support, technical review were really just sort of
7 disseminated amongst the remainder of the staff.
8 So I know that Ann, myself, Bob Asreen,
9 who's presently still there, all provided technical
10 overview for those people who did not have our particular
11 expertise.
12 Q. What was Ann's particular expertise, do you
13 know?
14 A. Biology, ecology, wetlands.
15 Q. Am I correct that Ann had special training in
16 wetlands?
17 A. Yes. In fact, I believe that was her Master's
18 degree, in wetlands delineation, wetlands identification.
19 I can tell you if a land's wet, but that's about as far
20 as I can help you. When instances such as that arose,
21 those would be the types of questions that I would ask of
22 Ann.
23 Now, towards, I guess, the latter year,
24 year and a half, two years of my tenure at DNREC, I

Page 16

1 remember handing a lot of my sites that had ecological
2 issues over to Ann for her review since I was not a
3 biologist or an ecologist.
4 Q. How about this natural resources damage
5 assessment, is that something that Ann was trained in?
6 Would that be considered a special duty?
7 A. Yes. I'll be honest with you, I did not have
8 any personal involvement in NRD, natural resource damage.
9 My knowledge there is really scanty. The basic concept
10 being the view that groundwater, ecology, wildlife, biota
11 are resources of the state and if you somehow impact
12 them, you, therefore, owe the state based on the laws of
13 that resource.
14 I did not have any workings immediately
15 with that group, so I'm really not best man for those
16 sorts of questions.
17 Q. Did both of you serve on the Consultant Review
18 Committee?
19 A. Yes.
20 Q. What is that?
21 A. In order to perform environmental consulting
22 work at a SIRB or Superfund site in the state of
23 Delaware, we didn't want anyone with a shovel performing
24 the work because it can be hazardous work. We early on

Page 17

1 in the program as part of the initiation of the
2 multicleanup program I believe put together a consultant
3 qualifications program which essentially stated these are
4 the minimum requirements that you need to have, minimum
5 personnel you need to have, minimum experience you need
6 to have in order to perform investigation or cleanup work
7 under the state Superfund, which then became SIRB,
8 program.
9 So consultants wishing to do work and
10 managing cleanup or investigate any of our sites
11 submitted a qualifications package to this group who
12 reviewed these qualification packages and made a decision
13 on whether or not they were qualified. We tried to
14 include all technical aspects. I know engineering,
15 biology, chemistry, geology, management, wells, technical
16 staff.
17 Q. Would you agree that both Ann and yourself had
18 essentially similar responsibilities as full-performance
19 project managers?
20 A. Actually, if I might step back a minute. You
21 just triggered a memory. For a long time, I don't recall
22 exactly how long, Ann really managed that consultant
23 qualifications program. Towards my last two years there
24 I believe Alex Rittberg took it over. But for a very

5 (Pages 14 to 17)

Breslin
Keith J. Robertson

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 26, 2006

Page 18

1 long time, as a matter of fact, Ann was a real
2 coordinator in essentially noting which packages came in,
3 disseminating them to the various people that are on the
4 review committee, coordinating the responses, getting
5 responses to the consultants, identifying any hole data
6 gaps that might be necessary, that sort of thing.
7 I'm sorry. Go ahead. I didn't mean to
8 interrupt.
9 Q. I wanted to know if you would consider both you
10 and Ann similar with respect to your responsibilities as
11 full-performance project managers.
12 A. Certainly. Certainly. In the beginning when I
13 think DNREC-SIRB had a lot more experienced staff, we
14 were the new bees. We did a lot of the hands-on, a lot
15 of the field work. Actually that worked out well because
16 it gave us a lot of hands-on training.
17 After a while, with a lot of the senior
18 staff leaving, Ann and I were became the senior staff and
19 we got junior staff below us. There really were only
20 four -- three, four, maybe five, people in SIRB by the
21 time of my second stint at DNREC that was ongoing that
22 really carried a full load of sites, and that means more
23 than a dozen sites, but you yourself managed, as well as
24 providing tag review and technical review for the other

Page 19

1 people and doing regulatory development work such as
2 consultant qualifications or something like that. But
3 Ann was most definitely one of the people carrying her
4 full load.
5 Q. Tell me about the training that you had to do
6 to become an Environmental Scientist III.
7 A. Besides my formal education?
8 Q. Yes. Would it be training on-site there?
9 A. Well, DNREC, particularly in my first couple
10 years there, we underwent an awful lot of training. Some
11 of it was held on-site at the office, some of it up at
12 Philadelphia EPA Region 3, some of it across the country
13 offered by various either governmental or private
14 organizations, both in project management, regulatory
15 issues such as here are the EPA Superfund, learn about
16 EPA Superfund, risk assessment, technical issues, state
17 transport of contaminants, etcetera. And they were
18 offered all the time.
19 We had, thankfully, a very healthy training
20 budget. And Ann I know was one of us three or four of us
21 that took advantage of these as much as possible. Went
22 at least twice a year, if not more, to these various
23 training exercises. Courses I should say.
24 Q. There was also a 40-hour OSHA training?

Page 20

1 A. You have to have that to even work in our
2 program.
3 Q. That was required?
4 A. Yes.
5 Q. So both you and Ann took part in that?
6 A. Everyone who went out in the field in our
7 program had to have that.
8 Q. At some point in your career with DNREC you
9 left; is that correct?
10 A. Correct. Twice, actually. The first time I
11 left was September 1999.
12 Q. September of 1999. Tell me why you left.
13 A. Two reasons. One, I wanted to see what else
14 was out there. I had done a stint of five plus odd years
15 with the State and I just sort of had this inkling if I
16 spent too much time working for the State, then -- not
17 too much time. That's not quite the phrase I'm looking
18 for. After a certain amount of time working in
19 regulatory government, private consulting firms won't
20 hire you. At least that's the conventional wisdom. They
21 figure that you're whatever. That's the conventional
22 wisdom. That was sort of playing at the back of my head.
23 If I ever wanted to try consulting, probably now is about
24 the time.

Page 21

1 Second, it was actually -- rough little
2 patch, six or seven months, where I had some very trying
3 sites that I was managing, very political, always on the
4 phone putting out some political fire, police stations
5 calling me, property owners calling their lawyers,
6 calling here. That's not what I got into the business
7 for. I'm a scientist. They just sort of drove me nuts.
8 Combination of factors which caused me to depart in 1999.
9 Q. You eventually returned to DNREC approximately
10 a year later?
11 A. Fourteen months, yes.
12 Q. You said before that you returned because, I
13 guess, someone contacted you from DNREC?
14 A. The reason that I returned, I worked for this
15 consulting firm for 14 months and didn't realize it, I
16 guess, or chose not to realize it, pick your poison
17 there, when I chose to work for that consulting firm,
18 that I was doing a lot of travel. It got to the point
19 where I was living out of a suitcase and traveling twice
20 a week. On Monday morning I never knew where I would be
21 by Thursday. That really got a little tiresome.
22 Combine that with an awful lot of hours,
23 many of which were not paid. And I started to feel like
24 I was being abused. All the hours and time that I was

6 (Pages 18 to 21)

Breslin
Keith J. Robertson

v. State of Delaware, Department of Natural Resources & Environmental Control
C.A. # 05-290 June 26, 2006

Page 22

1 putting in, someone else making money off me. So I had
2 had enough and thought about well, okay, I have tried my
3 stint at consulting, don't like it, maybe I can go back
4 and do regulatory work again. It was about the time that
5 I was mulling that over that I got a phone call from
6 Alex Rittberg, saying well, we have got some openings,
7 would you be interested in returning. Well, yes, I would
8 be. So I did return.

9 Q. When you returned to DNREC, were you making the
10 same amount that you had been making when you left?

11 A. No. It increased a little bit, but that was
12 because the baseline salary had increased during that
13 time. I don't know a percentage point. One and a
14 half percent, something like that. They increased.

15 Q. Did you receive any other increases while you
16 worked at DNREC?

17 A. Yes.

18 Q. Tell me about --

19 A. They were just the cost of living increases
20 that they gave to everybody.

21 Q. When you talked about the increase of, I think
22 you said, one or two percent, would that have been the
23 limited merit review, limited maintenance review?

24 A. No. No. When it came to environmental

Page 23

1 scientists, whenever they performed maintenance, we never
2 got raises. We got cuts. No. Same thing with when they
3 took us off of selective market, our baseline salary went
4 down. Except for cost of living increases, scientists'
5 salaries rarely went up.

6 Q. Was there a difference in the salary that you
7 received versus what Ann Breslin received?

8 A. In the beginning I presume that we were both
9 making the same. When I got my advanced hire and
10 promotion to a III, Ann was also promoted to a III at
11 some point. I don't know when. I really don't.

12 Q. That's okay.

13 A. So there was a time when, yes, I was making
14 more than her and when she got her promotion to a III, I
15 know that there was some disagreement between her and her
16 supervisor at the time, Karl Kalbacher, and she did not
17 either get as much of the advanced hire or didn't get
18 advanced hire, one or the other. But at the end of it
19 she was a III, I was a III, and I was making a lot more
20 than her.

21 Q. Do you know whether Ann was making entry-level
22 as an ES III?

23 A. Honestly I didn't keep that much track on
24 anybody.

Page 24

1 Q. That's fair. Do you know whether Ann was the
2 only regular full-time female Environmental Scientist III
3 in SIRB?

4 A. Hold on. Let me go back. What date are we
5 talking here?

6 Q. I want to talk about through your employment
7 there. So '94 to --

8 A. Sanger may have. I honestly don't remember
9 what title she held.

10 Q. Who she that?

11 A. Sanger may or may not have been an
12 environmental scientist. But she also had been there a
13 lot longer.

14 Karissa Hendershot may have been a III. I
15 honestly don't recall.

16 Kristin Thornton may have gotten promoted
17 to a III by the time I left second time around which is
18 what, two years ago?

19 Same thing with Rebecca Hawkins, but she
20 since left DNREC. Both of them, if they were IIIs, they
21 were only III right before I left.

22 Q. But you're not sure whether they were III?

23 A. I'm not sure whether they were or weren't. The
24 only one I can think of that may have been a scientist

Page 25

1 III -- in fact, she was a scientist -- was
2 Jane Biggs-Sanger and she had been there a long time by
3 the time Ann and I started.

4 Q. But do you know whether she was a seasonal
5 employee?

6 A. She was full-time for a long time and then she
7 had some family issues and she left and then came back.
8 The details of when she came back I can't tell you.

9 Whether it was seasonal, whether it was full-time. I
10 know there was an awful lot of issues associated with her
11 return. I really can't tell you.

12 Q. Why did you leave DNREC the second time?

13 A. I was disgusted with upper-level management.

14 Q. You were?

15 A. Yes.

16 Q. Why is that?

17 A. I felt that -- I want to choose my words
18 carefully here. I felt that upper-level management --
19 I'm not talking about my supervisor. I'm not even
20 talking about my branch manager. I'm talking about above
21 their heads -- were doing the citizens of the state of
22 Delaware a disservice by focusing more, paying more
23 attention to the politics of the program than the
24 technical merits of the program. I got the distinct

7 (Pages 22 to 25)

Breslin

Keith J. Robertson

v.

State of Delaware, Department of Natural Resources & Environmental Control

C.A. # 05-290

June 26, 2006

Page 26

1 feeling -- no, not feeling. I know for a fact that many
2 decisions were made and swept -- our opinions swept aside
3 and after a while I just came to the conclusion, well, if
4 you're not going to listen to me, then why am I here? It
5 wasn't just me.

6 Q. There were others that felt the same way?

7 A. Most. Most.

8 Q. Just one more question for you. There has been
9 some discussion about the location of each person's
10 personal records in the New Castle office. Would you be
11 able to tell us what you know, if anything, about access
12 to those records by employees?

13 A. Unfettered access by anyone who wants it, as
14 far as I knew.

15 Q. That includes like employees through
16 upper-level management?

17 A. Someone off the street. I don't know in what
18 order these occurred, but the personnel files are located
19 in -- there was like an island in the middle of the
20 secretarial area that the top -- the tabletop and used
21 for papers and various things, and then underneath were
22 filing. Personnel records were at some point kept in
23 there.

24 I also know that they were also at some

Page 27

1 point kept in the filing room which consisted of a half
2 dozen mobile filing shelves that could be moved back and
3 forth. Particularly the filing room, the mobile filing
4 shelf, there was absolutely no restriction on access to
5 those files.

6 Q. So anyone could access anyone's personnel file,
7 like even one that's not their own?

8 A. Yes.

9 MS. BREWINGTON: I don't have anything
10 further.

11 Valerie, do you have anything?

12 MS. CSIZMADIA: I do.

13 BY MS. CSIZMADIA:

14 Q. Keith, I think that I have it correctly. You
15 said in the there are three programmatic sections. One
16 was federal sites, another was state and volunteer
17 cleanup sites, and there were preremedial sites?

18 A. Correct.

19 Q. You said that the techniques and knowledge
20 bases were the same, but there were some programmatic
21 differences between the programs you did and the programs
22 that Ann did; is that right?

23 A. Well, the technical knowledge base was the
24 same, correct. The legality, the programmatic

Page 28

1 differences, for instance, how the federal program
2 operated versus the state program versus the preremedial
3 program, those changed. But the technical knowledge base
4 was the same for all three programs.

5 Q. You're in Water Resources now?

6 A. Yes.

7 Q. Would it be similar to the environmental
8 scientist positions at DNREC that were environmental
9 scientists, the same knowledge bases or the same
10 techniques I think you said were the same as the ones in
11 SIRB but a different program?

12 MS. BREWINGTON: I'm going to object to
13 form. Mr. Robertson, you can go ahead and answer if you
14 understood the question.

15 A. I'm not quite sure -- correct me if I'm wrong,
16 make sure that I have this right. Are you asking if the
17 skills and knowledge base of what I do now versus what I
18 did before? Actually, I'm not sure.

19 Q. There were environmental scientists I believe
20 you said in like Water here in Delaware?

21 A. Yes. Water Resources.

22 Q. Right. And would they have similar techniques,
23 the ES IIIs in Water, as was used in the SIRB branch?

24 A. Some. It really depended on what they did.

Page 29

1 For instance, an environmental scientist with a
2 hydrogeology background, which is what I was at SIRB, and
3 what those people are in Water Resources presently at
4 DNREC, while there is a knowledge base of hydrogeology,
5 the basics of the science, there were differences. Water
6 Supply, for instance, performs and does work drastically
7 different than a groundwater scientist would do in SIRB
8 who was concerned less with water supply, in fact almost
9 not at all, more than contamination of the groundwater.

10 So that there was a significant overlap, of
11 course, but there were some differences.

12 Q. Okay.

13 A. Does that answer the question?

14 Q. I think so.

15 Can you tell me about the work you did for
16 the State related to the arsenic background
17 concentration, the arsenic --

18 A. Actually, if I may take a step back and there's
19 a little bit more background to it.

20 When I started with DNREC -- actually, when
21 the voluntary cleanup program was put together in 1995, I
22 think, one of the subjects that was bantered about was
23 the idea of cleanup standards. And one of the approaches
24 to cleanup standards was a background standard, cleaning

Breslin
Keith J. Robertson

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 26, 2006

Page 30

1 up a site and all of its contaminants to background.
2 Well, of course, the organic background
3 would be zero. Without man, these man-made chemicals
4 wouldn't be there. Particular sites are complicated with
5 metals and inorganic compounds because they are, to some
6 extent, naturally occurring; therefore, you have to make
7 a determination on whether the observed concentrations of
8 metals or inorganics at your site are above what would be
9 naturally occurring or not.
10 And there was an old publication that one
11 of the former SIRB members had put together years before
12 that essentially compiled a lot of background site sample
13 data into a table and said, okay, here's a bunch of
14 supposedly background data of metals. What I did was
15 took that table and then added or supplemented to it
16 another 75 samples or so, performed some statistical
17 analyses on it, and that became adopted as the background
18 cleanup standards for metal.
19 That's the background. When the tanneries
20 initiative, when the tanneries became a more noticeable
21 factor in the SIRB program, which I'll say is '99, 2000,
22 somewhere along that line, arsenic came to the forefront
23 because arsenic is one of the primary contaminants in
24 tannery waste. And because arsenic was such a big issue

Page 31

1 and the background concentrations were sufficiently small
2 and very close to EPA's toxic threshold for arsenic,
3 there was some confusion over background being higher
4 than the toxic threshold, etcetera, etcetera.
5 So when Alex Rittberg initiated and -- he
6 came up with the idea and I sort of -- he passed the buck
7 to me and I ran with it. It was the arsenic study in
8 which background flow samples were collected from I
9 forget how many, but some number of areas that were
10 presumably not impacted by industrial activity, the
11 parklands, wilderness areas, those sorts of things, where
12 presumably any arsenic present would be naturally
13 occurring.
14 Took samples from these areas, analyzed
15 them for the full fleet of metals but particularly
16 interested in arsenic. Took some values, performed
17 statistical analysis on them, and the end publication I
18 put together compared the data set from that arsenic
19 study, the background study that we just did, to the
20 statistical samples that were done from all that previous
21 background data that I had mentioned a few minutes ago,
22 and essentially presented a bunch of statistical measures
23 and values and from that offered that to management and
24 said here's the range of data, here's where the numbers

Page 32

1 fall. Allowing them -- making recommendations about what
2 the cleanup standards should be, but knocking it back
3 into their court to make the final decision.
4 Q. That's basically original research?
5 A. Yes. I won't claim it's completely original
6 because my supervisor came up with the idea.
7 Q. But you implemented it and did the work?
8 A. Yes.
9 Q. Can you tell me a little bit about the CO
10 archeology work you did for the Rhode Island Center for
11 Public Archeology and specifically any project management
12 that you did there?
13 A. Actually, as a geoarchaeologist, I was not a
14 project manager at all. I was technical staff.
15 Q. That was where?
16 A. At the University of Rhode Island Center for
17 Public Archeology.
18 Q. What about as the coastal geologist for the
19 Institute of Marine Science?
20 A. Coastal geologist, Center for Marine Science,
21 was an extension of my Master's thesis work. I did
22 research on my Master's thesis in coastal geology at the
23 University of North Carolina and my adviser had various
24 other projects ongoing in the Outer Banks and coastal

Page 33

1 North Carolina. And I worked with him with his various
2 projects and also performed as an outside editor to a
3 coastal research journal.
4 Q. I'm looking at your advanced hire document and
5 I'll represent to you that it says, "While employed by
6 the University of North Carolina, Keith was a project
7 manager for a 14-month field study of shoreline dynamics
8 along Topsail Island, North Carolina, and was fully
9 responsible for the design, development, implementation,
10 and conclusion of the project."
11 A. That was my Master's thesis. Yes.
12 Q. Is that statement correct?
13 A. Yes.
14 Q. And then did I ask you about the University of
15 Delaware Center for Archaeological Research?
16 A. No. The work I did at the University of
17 Delaware and the work I did at University of Rhode Island
18 are essentially the same thing. I worked in programs
19 that required a level of physical science knowledge, but
20 in both cases there were no physical scientists on staff.
21 So I did physical science work for them. Geology, soils,
22 identification of flora and fauna, identification of
23 artifacts, those sorts of things. In both cases I was
24 staff, technical staff.

9 (Pages 30 to 33)

Breslin

v.

State of Delaware, Department of Natural Resources & Environmental Control

Keith J. Robertson

C.A. # 05-290

June 26, 2006

Page 34

1 Q. When I was just reading from the advanced hire
2 request, I believe you said earlier that Jamie Rutherford
3 and you worked on those together?
4 **A. Correct.**
5 Q. And Jamie is a male or female?
6 **A. Female.**
7 Q. And did you say that you did the original
8 write-up and then she made some changes to it?
9 **A. She edited. Reviewed it and edited it and made**
10 **suggestions.**
11 Q. I assume that she asked you to do that, to
12 draft it?
13 **A. Yes.**
14 Q. Did she tell you why she asked you to draft it?
15 **A. If I want the promotion, then I got to work for**
16 **it.**
17 Q. Were you the best person to draft it?
18 **A. Honestly I'm not trying to be smart, but who**
19 **else would know my background better than me? If it's a**
20 **promotion that I want, I'm going to be the one that gives**
21 **the best recommendation on why I deserve it.**
22 Q. Right. Did you ever put in for an ES IV?
23 **A. No.**
24 Q. Was that your decision?

Page 35

1 **A. Yes. Honestly, if I had been there a little**
2 **longer, I was going to apply for it, but it came to my**
3 **realization about a year before I left that given a**
4 **particular division director and some of the upper-level**
5 **management, that I had bumped heads enough that there**
6 **wasn't a snowball's chance in hell, if I may use a**
7 **vernacular, of my ever getting promoted to IV based on**
8 **politics. I didn't even bother.**
9 Q. When you were rehired by DNREC, does the term
10 "reconstructed salary" mean anything to you?
11 **A. I don't know what it means.**
12 Q. Going back to the advanced hire request that
13 you put together, so everything in that would be true?
14 **A. Yeah.**
15 Q. Are you and Ann friends?
16 **A. Yes. Not close, close friends, but yeah, we're**
17 **friends.**
18 Q. When we were talking about the personnel files
19 earlier or you and Lori were, you were talking about the
20 main personnel files, I believe, where the official
21 records are kept. Is that right?
22 **A. You know, I never pawed my way through it. I**
23 **don't know if there were multiple subsets or some were**
24 **primary or secondary. I just know that there were a lot**

Page 36

1 **of files in there with people's names on them.**
2 Q. Do you know if the managers had individual
3 files perhaps in their own offices?
4 **A. I'm sure they did, but I don't know that for**
5 **sure one way or the other.**
6 Q. Did Ann ever tell you or did anybody ever tell
7 you that Ann went into Karl's office after he left and
8 took out some files?
9 **A. No. Never heard of that.**
10 MS. CSIZMADIA: Give me just a second,
11 please.
12 Those are all the questions that I have.
13 MS. BREWINGTON: I don't have anything
14 further. Mr. Robertson, would you like to read and sign
15 the deposition transcript? You have the right to do
16 that, but you can certainly waive that if you don't want
17 to.
18 THE WITNESS: I'll tell you what, unless I
19 absolutely have to, because it would probably be an
20 awfully long fax. If you want me to, I will do it, but,
21 again, I'm happy to mail it or fax it to me to do it. It
22 makes no matter.
23 MS. BREWINGTON: We will go ahead and
24 waive. If you'd like to waive, I don't have a problem

Page 37

1 with that.
2 THE WITNESS: Okay. Thank you.
3 MS. CSIZMADIA: Just because he says that,
4 he's never done one before, Keith, the purpose of reading
5 and signing the deposition is to have an opportunity to
6 look at it and make sure that the court reporter got
7 everything right.
8 THE WITNESS: Oh, okay.
9 MS. CSIZMADIA: So it would be your
10 opportunity to look at it and say, you know, that's not
11 what I said, I distinctly remember what I said in a
12 particular instance. So if you waive that opportunity,
13 you don't have another opportunity to do it. If you
14 wanted to do that, we could certainly overnight it to
15 you. It is a short time frame that you have to do it,
16 but it is your one time.
17 THE WITNESS: How long would it be?
18 MS. CSIZMADIA: Thirty-five pages, and the
19 pages don't have a lot of lines on them.
20 THE WITNESS: I didn't realize I talked
21 that much.
22 MS. CSIZMADIA: They're double-spaced.
23 THE WITNESS: I'll tell you what. For
24 formality sake, why don't I.

10 (Pages 34 to 37)

Breslin
Keith J. Robertson

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 26, 2006

Page 38

1 MS. BREWINGTON: That's fine with me.
2 Off the record.
3 (Deposition concluded at 2:00 p.m.)
4 - - - - -
5
6 TESTIMONY
7
8 DEPONENT: KEITH J. ROBERTSON PAGE
9
10 BY MS. BREWINGTON..... 2
11 BY MS. CSIZMADIA..... 27
12
13 (No exhibits were marked at this time.)
14
15 ERRATA SHEET/DEPONENT'S SIGNATURE PAGE 39
16
17 CERTIFICATE OF REPORTER PAGE 40
18
19
20
21
22
23
24

Page 40

CERTIFICATE OF REPORTER

STATE OF DELAWARE)
)
NEW CASTLE COUNTY)

I, Kimberly A. Hurley, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 26th day of June, 2006, the deponent herein, KEITH J. ROBERTSON, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Kimberly A. Hurley
Certification No. 126-RPR
(Expires January 31, 2008)

DATED:

Page 39

REPLACE THIS PAGE
WITH THE ERRATA SHEET
AFTER IT HAS BEEN
COMPLETED AND SIGNED
BY THE DEPONENT

Breslin
Paul W. Will

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 23, 2006

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANN L. BRESLIN,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 05-290
)	
STATE OF DELAWARE,)	
DEPARTMENT OF NATURAL)	
RESOURCES & ENVIRONMENTAL)	
CONTROL,)	
)	
Defendant.)	

Deposition of PAUL W. WILL taken pursuant to notice at the offices of DNREC, 391 Lukens Drive, New Castle, Delaware, beginning at 10:00 a.m., on Friday, June 23, 2006, before Kimberly A. Hurley, Registered Merit Reporter and Notary Public.

APPEARANCES:

LORI BREWINGTON, ESQUIRE
MARGOLIS EDELSTEIN
1509 Gilpin Avenue
Wilmington, Delaware 19806
for the Plaintiff

VALERIE S. CSIZMADIA, DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801
for the Defendant

ALSO PRESENT:

ANN L. BRESLIN

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
www.wilfet.com

Breslin
Paul W. Will

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 23, 2006

Page 2

1 PAUL W. WILL,
2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:
5 BY MS. BREWINGTON:
6 Q. Good morning.
7 A. Good morning.
8 Q. I have the privilege of taking your deposition
9 here today. Have you ever participated in a deposition
10 before?
11 A. Yes.
12 Q. So you know how this works?
13 A. Uh-huh.
14 Q. I'm going to ask you a series of questions, and
15 I will make every effort to ask them one at a time.
16 A. Okay.
17 Q. If you don't understand something, just let me
18 know and I will repeat it. If you do answer the
19 question, we will go ahead and assume that you did
20 understand the question that was asked. In order for
21 this to work, we have a court reporter here, and please
22 be sure that your answers are yes and no as opposed to
23 uh-uhs or the uh-huhs because they don't show up too
24 great on the record.

Page 3

1 The other rule is that we have to take
2 turns talking. I don't think we will have a problem with
3 that. I think I'll ask questions and you will be able to
4 answer, and I'll make every effort not to interrupt you.
5 A. Okay.
6 Q. At times DNREC's attorney may object to some of
7 the questions that are being asked. The only thing that
8 I ask is that you go ahead and answer the question unless
9 she specifically advises you not to answer the question.
10 Do you understand?
11 A. Yes.
12 Q. Please state your name for the record.
13 A. Paul W. Will.
14 Q. What did you do in preparation for your
15 deposition testimony today?
16 A. Not much. I have been through it before, so
17 I'm familiar with what goes on.
18 Q. Did you review any documents?
19 A. I reviewed some old documents that I had
20 prepared when Ann was employed with DNREC.
21 Q. Do you remember which documents you reviewed?
22 A. A couple of documents that I prepared regarding
23 some procedures that I didn't think were exactly
24 followed.

Page 4

1 Q. These were procedures that weren't followed by
2 Ann?
3 A. Yes.
4 Q. Was it like performance review documents or
5 something like that?
6 A. No. These were regarding some projects that
7 she was involved with.
8 Q. And then what you wrote about the actual
9 projects and gave her a copy of it?
10 A. I wrote about the incident that was regarding
11 the project and I believe I gave her a copy of it or she
12 was -- there was a copy that was accessible for her.
13 Usually you make a copy of it and one was for the file,
14 one was for the employee, and one was for my manager who
15 I prepared it for.
16 Q. Was there more than one document that you
17 reviewed like that?
18 A. I think there were two.
19 Q. Other than those two documents, do you recall
20 reviewing anything else?
21 A. No.
22 Q. I'd like to start off by talking about your
23 work experience specifically with DNREC and then we will
24 go to your work experience prior to DNREC. If we could

Page 5

1 start with chronologically when you became employed, in
2 what capacity, how long you served in that capacity. If
3 you need to have me ask a question to prompt you to
4 continue, we will go from there.
5 A. I have had two positions since I have been
6 employed with DNREC. I started with DNREC April 1st,
7 1993, and was hired as an Environmental Scientist III,
8 and I served in that capacity until about January 2000,
9 upon which time I took over as a Program Manager I. I
10 have been employed in that capacity since January 2000.
11 Q. As an ES III were you in SIRB or in a different
12 branch?
13 A. I think I was with the Superfund branch which
14 is the SIRB branch. We changed names, I guess, from the
15 late '90s. We went from the Superfund to the Site
16 Investigation & Restoration Branch. So for all of my
17 13 years has been with this branch that I'm currently
18 with. We just changed names.
19 Q. As program manager -- and you became that in
20 2000?
21 A. January 2000, yes.
22 Q. -- did you have direct reports, like did people
23 directly report to you? Were you their supervisor?
24 A. Once I became a manager, yes. I had a staff of

2 (Pages 2 to 5)

Breslin
Paul W. Will

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 23, 2006

Page 6

1 about I think at that time six people that reported to
2 me. Ann being one of them.

3 Q. Let me just represent to you something. Ann
4 became employed in 1994 with DNREC. When did you become
5 her manager, do you remember?

6 A. January of 2000.

7 Q. That was when she was directly under you in
8 January of 2000?

9 A. I believe so, yes.

10 Q. Who else reported to you at that time, do you
11 remember?

12 A. Larry Jones, Karissa Hendershot, I think
13 Kurt Olinger.

14 Q. That was a while ago.

15 A. Yes. Dave Langseder, I believe, and I think
16 Rebecca Hawkins, although I'm not quite sure of her hire
17 date. I don't know if she came to me from another
18 manager when she switched staff. That's about all I can
19 recall.

20 Q. This was in 2000 and Ann was an ES III; is that
21 correct?

22 A. I'm not sure what her -- I don't know if she
23 was a II or a III.

24 Q. How about the others, were they either

Page 8

1 A. Correct.

2 Q. What were some of your primary job
3 responsibilities?

4 A. As a PM I.

5 Q. You're a PM I now?

6 A. Yes.

7 Q. Tell me what are some of your jobs.

8 A. I manage a staff of about -- I think at this
9 point I have four, maybe five, people that report to me,
10 and they're assigned to environmentally related projects
11 and I oversee their work on those projects. I also
12 conduct their performance plans, reviews, and report to
13 Kathy Stiller Banning, who is our current PM II.

14 Q. Who is that, again?

15 A. Kathy Stiller Banning. She's our current
16 Program Manager II. She's our branch supervisor.

17 Q. Christina Wirtz?

18 A. She's a program manager. She was the Program
19 Manager II prior to Kathy Stiller Banning.

20 Q. When was that change?

21 A. I think I want to say a year this -- not this
22 past October, not October 2005, but maybe October 2004.
23 In that time frame. I think the fall of 2004 is when the
24 switch occurred.

Page 7

1 Environmental Scientist II or III?

2 A. Yes. I think Karissa Hendershot may have been
3 a I. She was either a I or a II. I think Kurt Olinger
4 was a III. David Langseder was an Engineer II or III.
5 And Rebecca Hawkins I believe was either an ES I or II.
6 I think there was also one other person.
7 Kristin Thornton was under my group. She was an ES II
8 when I started managing.

9 Q. Is it fair to say that Ann may have been the
10 only ES III in SIRB in 2000 that was a female?

11 A. I don't know if that was the case or not. I
12 know we had other female ES's. I'm not sure what their
13 levels were.

14 Q. We have talked about your work experience at
15 DNREC. Let's talk about your work experience prior to
16 DNREC.

17 A. Okay. Graduated from UNC, North Carolina,
18 Chapel Hill, in '89. I was employed with Guardian
19 Environmental out of Bear, Delaware, from May 1990 until,
20 I think, February '91. From February '91 until March '93
21 I was with WIK Associates, an environmental consultant
22 here in New Castle, and then came to DNREC in April '93.

23 Q. You indicated that you were a Program
24 Manager I?

Page 9

1 Q. What position is Christina currently?

2 A. I think she is the community ombudsperson for
3 the division.

4 Q. Is this a position she applied for, do you
5 know?

6 A. I don't know.

7 Q. What was your major in college?

8 A. Geography, with an environmental science minor.

9 Q. That's your Bachelor's, correct?

10 A. Correct.

11 Q. Do you have a Master's degree?

12 A. No, I do not.

13 Q. Did Ann report to you throughout her life of
14 employment?

15 A. She reported to me from the time I became a
16 PM I, which was January 2000, I think up until about
17 maybe nine months before she departed. The last nine
18 months I think of her time with DNREC she reported to
19 Alex Rittberg.

20 Q. Who is Alex Rittberg?

21 A. He is currently the Program Manager II of the
22 Tanks Management Branch.

23 Q. When Ann reported to him, was he also a Program
24 Manager I?

3 (Pages 6 to 9)

Breslin

v.

State of Delaware, Department of Natural Resources & Environmental Control

Paul W. Will

C.A. # 05-290

June 23, 2006

Page 10

1 **A. Yes.**
 2 Q. Did Keith Robertson report to Alex Rittberg?
 3 **A. Yes.**
 4 Q. How familiar are you with Ms. Breslin's lawsuit
 5 against DNREC?
 6 **A. Vague familiar. I just know that there is one**
 7 **pending. It's been going on, I think, for quite**
 8 **sometime.**
 9 Q. What is your understanding of the nature of
 10 this lawsuit?
 11 **A. My understanding of it is it has to do with a**
 12 **pay disparity or something.**
 13 Q. Do you have an understanding of with whom this
 14 pay disparity is with?
 15 **A. As far as like a former DNREC employee?**
 16 Q. I'm just asking. I don't know.
 17 **A. I think my understanding of it is it revolves**
 18 **around the hiring of Keith Robertson as opposed to the**
 19 **hiring in relation to the hiring of Ann.**
 20 Q. Tell me a little bit about DNREC in terms of
 21 its purpose and its function.
 22 **A. I can tell you about the purpose of the branch**
 23 **that I work with.**
 24 Q. Is that because you're not familiar with the

Page 11

1 general purpose of DNREC, or is it because the branches
 2 are different?
 3 **A. The branches are different. If you were**
 4 **looking for the overall purpose of DNREC, it's to provide**
 5 **protection to public health and the environment in the**
 6 **state of Delaware. And the purpose of SIRB itself is to**
 7 **provide -- is to investigate, remediate the releases of**
 8 **hazardous substances which occur in the state.**
 9 Q. There are several different sections or
 10 branches in DNREC?
 11 **A. There's several different divisions and then**
 12 **branches within those divisions. I'm not sure of the**
 13 **exact numbers of -- there may be five or six different**
 14 **divisions and then branches within those divisions.**
 15 Q. Let me show you a document. We're going to
 16 have that marked as Will 1. Could you take some time now
 17 and review the document for me? I just want to ask you a
 18 couple questions about it.
 19 **A. Sure. (Complied.)**
 20 **(Will Deposition Exhibit No. 1 was marked**
 21 **for identification.)**
 22 **BY MS. BREWINGTON:**
 23 Q. Are you finished?
 24 **A. Uh-huh.**

Page 12

1 Q. Okay. What I have put in front of you is a
 2 document off the State of Delaware, the official Web
 3 site. At the top there it says, "DNREC: Division of Air
 4 & Waste Management." As I understand it, there are
 5 several different divisions in DNREC and this is just one
 6 of the divisions. Is that correct?
 7 **A. Right.**
 8 Q. Then there are also sections and branches
 9 within the Division of Air & Waste Management?
 10 **A. Yes.**
 11 Q. Are those the things that I had listed here
 12 where it says, "Air Quality Management Section,"
 13 "Emergency Prevention and Response Branch"?
 14 **A. Those are the different branches.**
 15 Q. What's the difference between a section and a
 16 branch?
 17 **A. In my opinion, very little.**
 18 Q. On the second-to-last page it's labeled: "Site
 19 Investigation & Restoration Branch." That's the SIRB?
 20 **A. Correct.**
 21 Q. It indicates that it's responsible for the
 22 identification, evaluation, and remediation of hazardous
 23 waste sites from Brownfields to federal Superfund sites
 24 in the state. Is that an accurate statement?

Page 13

1 **A. Yes.**
 2 Q. There are several other different sections
 3 here. Is it fair to say that each section has a
 4 different function?
 5 **A. I would say each branch has a different**
 6 **specialty. The function is still the same in my eyes**
 7 **which is to provide protection to public health, welfare,**
 8 **and the environment.**
 9 Q. Tell me how each section has a different
 10 specialty.
 11 **A. Well, within SIRB we deal primarily with soil,**
 12 **groundwater, sediment, surface water. Whereas, in the**
 13 **Air Branch, they deal primarily with air issues. Those**
 14 **are the differences that I see.**
 15 Q. In each section do you still have Environmental
 16 Scientists I, II, and III and Engineer I, II, and III, if
 17 you have those?
 18 **A. I do believe that each branch does have similar**
 19 **categories of workers as far as scientists, engineers.**
 20 **Obviously, in the Water & Soil Division, you have**
 21 **geologists that deal with soil issues. You wouldn't**
 22 **necessarily have that in the Air Branch. But I do**
 23 **believe like the Air Branch, they do have scientists. We**
 24 **have scientists. Water Resources has scientists.**

4 (Pages 10 to 13)

Breslin
Paul W. Will

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control
June 23, 2006

Page 14

1 **Engineers also in those branches, as well. The answer I**
2 **guess is yes, they do -- we have them here, they have**
3 **them there.**

4 Q. Would the Air Quality Management Section
5 scientists do the same job as the SIRB scientists?

6 **A. I'm not really familiar with what their**
7 **scientists do over in the Air Branch.**

8 Q. Would it be a fair statement that, since they
9 have different specialties, they are doing different
10 jobs?

11 **A. Again, I don't really know what their job is**
12 **over there, so I wouldn't be able to comment on what**
13 **their specialty is.**

14 Q. But you can't say one way or the other whether
15 the environmental scientist job is the same across the
16 board?

17 MS. CSIZMADIA: He already answered that.
18 I object that it's asked and answered.

19 MS. BREWINGTON: You can go ahead and
20 answer the question.

21 **A. Can you restate the question?**

22 Q. I guess what I'm trying to say is: You're not
23 familiar with the Air Quality Management Section.

24 **A. Not as familiar as I am with SIRB.**

Page 16

1 **We also use the ES III level more for our**
2 **technical assistance guidance teams. Again, based upon**
3 **their experience and knowledge of the projects and how**
4 **they relate to our mission here at SIRB.**

5 Q. You can go ahead and review that document.

6 MS. CSIZMADIA: Can I ask you if this is
7 current?

8 MS. BREWINGTON: I just printed it off the
9 Web site. Would it be current?

10 MS. CSIZMADIA: It would be current, but I
11 don't know if that's the same as --

12 MS. BREWINGTON: I'll ask him about it,
13 then.

14 (Will Deposition Exhibit No. 2 was marked
15 for identification.)

16 BY MS. BREWINGTON:

17 Q. I have just put in front of you a document
18 entitled, "State of Delaware Class Series Description
19 Environmental Science Series." I have asked you to
20 review it and specifically the Environmental
21 Scientist III on the second page.

22 **A. Okay.**

23 Q. Are the job duties listed in this document for
24 an ES III consistent with your understanding of the job

Page 15

1 Q. And you indicated that the Air Quality
2 Management Section is a different specialty.

3 **A. Because they deal with air and we don't.**

4 Q. If the environmental scientists in Air Quality
5 Management deal with air and SIRB environmental
6 scientists don't, is it fair to say that the
7 environmental scientists in Air would have a different
8 job?

9 **A. Yes.**

10 Q. Did Keith Robertson report to you at all?

11 **A. I don't believe so. I think he was always with**
12 **either Jamie Rutherford, who was the PM I before Alex and**
13 **when Alex assumed his PM I responsibilities, he inherited**
14 **Jamie's staff which included Keith.**

15 Q. I'd like to focus on the ES IIIs.

16 **A. Okay.**

17 Q. What are some of the job responsibilities of an
18 ES III in SIRB?

19 **A. I see them as managing all aspects of any**
20 **environmentally related project that they're assigned at**
21 **the ES III level. We look for the ES IIIs to manage with**
22 **a lesser degree of supervision from the PM I's just based**
23 **upon their experience and knowledge of the environmental**
24 **field.**

Page 17

1 duties of both Keith Robertson and Ann Breslin?

2 **A. Yes.**

3 Q. Then I'd like to take you to I think it's the
4 second-to-last page. It's entitled, "Minimum
5 Qualifications for Environmental Scientist III." Do you
6 see where it says that?

7 **A. Yes.**

8 Q. Is a Bachelor's degree in one of the life,
9 natural, or physical sciences a minimum qualification for
10 Environmental Scientist IIIs?

11 **A. Yes.**

12 Q. Is it your understanding that Ann Breslin had
13 both her Bachelor's and Master's degrees?

14 **A. Yes.**

15 Q. Do you have an understanding of whether
16 Keith Robertson had both his Bachelor's and Master's
17 degrees?

18 **A. As far as I knew, he did. Again, he wasn't**
19 **under me, so...**

20 Q. That's fair.

21 What are some of the other minimum
22 qualifications for an ES III?

23 **A. Well, the biggest one, of course, is the**
24 **degree.**

5 (Pages 14 to 17)

Breslin

Paul W. Will

v.
C.A. # 05-290

State of Delaware, Department of Natural Resources & Environmental Control

June 23, 2006

Page 18

1 Q. Is that pretty much the biggest one?

2 **A. That's the biggest one. Other qualifications**

3 **for that, to get to the III level, I think there is a**

4 **limited-experience requirement. You have to have so many**

5 **years' experience.**

6 Q. Do you know how many years?

7 **A. No, I don't.**

8 Q. Would you agree that Ann Breslin exceeded the

9 minimum qualifications of an ES III?

10 MS. CSIZMADIA: If I could clarify at what

11 point in time are you referring to, when he supervised

12 her?

13 MS. BREWINGTON: I guess my question is a

14 general question, and I just wanted to know if you would

15 agree that she exceeded them. And if you did, then you

16 can tell me what time frame.

17 **A. I would say she met the qualifications.**

18 Q. At no time did she exceed the minimum

19 qualifications?

20 **A. I think if she would have, I would have**

21 **recommended that she go to the IV level if she exceeded.**

22 Q. I hear what you're saying, but can you still

23 exceed the minimum qualifications and still be an ES III?

24 **A. I don't see why you couldn't.**

Page 19

1 Q. So if Ann exceeded the minimum qualifications,

2 you wouldn't necessarily have to promote her to a IV?

3 **A. No, you wouldn't have to.**

4 Q. But you're saying you would have?

5 **A. Could have, yes.**

6 Q. In terms of the minimum qualifications for the

7 Environmental Scientist IV, one of the minimum

8 qualifications is, quote, possession of either a Master's

9 degree in an environmentally related scientific

10 discipline." Is that correct?

11 **A. That's correct.**

12 Q. Would it be fair to say that Ann Breslin met at

13 least one of the minimum qualifications?

14 **A. By having the Master's degree in an**

15 **environmentally related scientific discipline, yes.**

16 Q. You can put that aside.

17 Were you responsible for conducting

18 performance reviews of Ms. Breslin?

19 **A. Yes.**

20 Q. How often?

21 **A. Performance reviews and plans were usually done**

22 **once a year.**

23 Q. What criteria did you base your reviews on?

24 **A. Work completed in an acceptable time frame,**

Page 20

1 **number of projects handled, ability to work with others.**

2 **I think, for the most part, that's it.**

3 Q. Did Ms. Breslin exceed expectations in terms of

4 her performance while she reported to you?

5 **A. I know she at least met them. There could have**

6 **been performance I'm not familiar with. I managed her**

7 **for almost four years, I think. I'm not sure if during**

8 **those years she exceeded, but good chance she probably**

9 **did.**

10 Q. Why do you say that?

11 **A. Because I don't have the reviews memorized as**

12 **far as what year, what rating she received.**

13 Q. No, but you said it's a good chance she

14 probably did exceed it. I just want to know why you said

15 that.

16 **A. I don't recall any real major deficiencies with**

17 **her work that would have resulted in her not getting at**

18 **least a meet/exceeds, but there could have been years**

19 **where performance was better than meets. I don't**

20 **remember what years those could have been.**

21 Q. In terms of meets expectations, is that

22 something that you start all your employees out with?

23 **A. No.**

24 Q. So some employees will start off with exceeds

Page 21

1 expectations for the first year of you evaluating them?

2 **A. No, not necessarily. The rating I give is**

3 **based upon that year's work.**

4 Q. I guess I'm trying to clarify. You don't start

5 anyone off at a meets.

6 **A. My personal management style? No.**

7 Q. Were you generally happy with her performance?

8 **A. Yes.**

9 Q. Could you tell me a little bit about Ann's work

10 ethic?

11 **A. I think she had a very good work ethic. I**

12 **think she believed in our mission. I think she enjoyed**

13 **the work she did.**

14 Q. Do you recall any of the projects that she was

15 on?

16 **A. I think when Ann worked with me, when we worked**

17 **together, her primary responsibility was to work with me,**

18 **assist me in what we call the preremedial program.**

19 **That's the performance of preliminary assessments and**

20 **site inspections. And in that capacity she did an**

21 **adequate job.**

22 Q. Just adequate?

23 **A. I'll say she did a good job.**

24 Q. Do you recall what type of preremedial programs

6 (Pages 18 to 21)